

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 18:42:04

About you

1 What is your name?

Name:
Dr Sarah Winkler-Reid

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Academic

5 What is your email address?

Email address:
[REDACTED]

6 What is your telephone number?

Telephone number:

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

Due to the potential for exploitation and abuse of birth mothers, and sale of children, it is my view that cases should not be heard by lay justices but rather by a senior judge.

Please provide your views below:

Due to the potential for exploitation and abuse of birth mothers, and sale of children, it is my view that cases should not be heard by lay justices but rather by a senior judge.

9 Consultation Question 2:

Please provide your views below:

Due to the potential for exploitation and abuse of birth mothers, and sale of children, it is my view that cases should not be heard by lay justices but rather by a senior judge

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

No

Please provide your views below:

My view is that we should follow the UN Special Rapporteur's recommendation on surrogacy that decisions about legal parenthood and parental responsibility should be taken in court after the birth of the child and that the child's best interests should be the utmost concern.

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Not Answered

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

No

Please provide your views below:

In my view, surrogacy arrangements should be treated in a similar way to adoption. The Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993 requires consent to be given only after the child's birth and until that point for the birth mother to have legal parenthood. These were put in place to protect birth mothers from exploitation and to safeguard against the sale of children. The same safeguards need to be in place for surrogacy to offer protection to birth mothers and reduce the risk of the sale of children.

15 Consultation Question 8:

Other

Please provide your views below:

I do not agree with the proposals for the 'new pathway'.

Not Answered

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Not Answered

Please provide your views below:

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

I do not agree with the proposals for the 'new pathway'.

18 Consultation Question 11:

No

Please provide your views below:

The UN Special Rapporteur recommends that the birth mother is the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority after the birth. The child's best interests should be the paramount consideration in these cases.

A short-time limit puts birth mothers under undue stress and pressure and puts those who do not have ready access to advice and/ or who are unable to put their objections into writing, at a disadvantage.

19 Consultation Question 12:

Not Answered

Please provide your views below:

20 Consultation Question 13:

No

Please provide your views below:

21 Consultation Question 14:

No

Please provide your views below:

The UN Special Rapporteur recommends that the birth mother is the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority after the birth. The child's best interests should be the paramount consideration in these cases. Welfare assessments would be necessary in order to ascertain the best interests of the child.

22 Consultation Question 15:

No

Please provide your views below:

It is my understanding that this represents a significant change in legal parenthood rules and could therefore have significant implications for all children.

Yes

Please share your views below:

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

23 Consultation Question 16:

No

Please provide your views below:

The UN Special Rapporteur recommends that the birth mother is the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority after the birth. This should apply even in still birth.

No

Please provide your views below:

The UN Special Rapporteur recommends that the birth mother is the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority after the birth. This should apply even in still birth.

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

No

Please provide your views below:

The UN Special Rapporteur recommends that the birth mother is the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority after the birth. This should apply even where the child dies before the making of the parental order.

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

26 Consultation Question 19:

No

Please provide your views below:

The UN Special Rapporteur recommends that the birth mother is the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority after the birth. This should apply even in the case of the death of the intended parents.

Please provide your views below:

27 Consultation Question 20:

Yes

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

29 Consultation Question 22:

Please provide your views below:

I disagree with the proposals for the 'new pathway'. The UN Special Rapporteur recommends that the birth mother is the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority after the birth.

30 Consultation Question 23:

Please provide your views below:

31 Consultation Question 24:

Please provide your views below:

The UN Special Rapporteur recommends that the birth mother is the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority after the birth.

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

33 Consultation Question 26:

No

Please provide your views below:

The UN Special Rapporteur recommends that the birth mother is the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority after the birth. These recommendations have been put in place to reduce the potential for the exploitation of women and sale of children. Decisions should not be automatic but should rather be taken by experienced and senior judges in court.

34 Consultation Question 27:

No

Please provide your views below:

The UN Special Rapporteur recommends that the birth mother is the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority after the birth. These recommendations have been put in place to reduce the potential for the exploitation of women and sale of children. Decisions should not be automatic but should rather be taken by experienced and senior judges in court.

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

No

Please provide your views below:

The UN Special Rapporteur recommends that the birth mother is the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority after the birth. The child's best interests should be the paramount consideration in these cases.

A short-time limit puts birth mothers under undue stress and pressure and puts those who do not have ready access to advice and/ or who are unable to put their objections into writing, at a disadvantage

36 Consultation Question 29:

Please provide your views below:

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Other

Please provide your views below:

I do not agree with the proposals for the new pathway

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

39 Consultation Question 32:

Please provide your views below:

I do not agree with the proposals for the new pathway

Please provide your views below:

I do not agree with the proposals for the new pathway

40 Consultation Question 33:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

41 Consultation Question 34:

Please provide your views below:

Please provide your views below:

Please provide your views below:

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Not Answered

Please provide your views below:

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Not Answered

Please provide your views below:

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Not Answered

Please provide your views below:

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Yes

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Not Answered

Please provide your views below:

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

55 Consultation Question 47:

Yes

Please provide your views below:

Not Answered

Please provide your views below:

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

57 Consultation Question 49:

Yes

Please provide your views below:

Please provide your views below:

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

59 Consultation Question 51:

Yes

Please provide your views below:

Please provide your views below:

60 Consultation Question 52:

Please provide your views below:

Please provide your views below:

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

No

Please provide your views below:

I do not agree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

Please provide your views below:

I do not agree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

65 Consultation Question 57:

Please provide your views below:

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Not Answered

Please provide views below:

67 Consultation Question 59:

Not Answered

Please provide views below:

Please provide views below:

Not Answered

Please provide views below:

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

Not Answered

Please provide your views below:

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

Not Answered

Please provide views below:

70 Consultation Question 62:

Please provide your views below:

Please provide your views below:

71 Consultation Question 63:

Not Answered

Please provide your views below:

Please provide your views below:

Not Answered

Please provide your views below:

72 Consultation Question 64:

Not Answered

Please provide your views below:

Please provide your views below:

Not Answered

Please provide your views below:

73 Consultation Question 65:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Not Answered

Please provide your views below:

Please provide your views below:

75 Consultation Question 67:

Not Answered

Please provide your views below:

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Not Answered

Please provide your views below:

77 Consultation Question 69:

Not Answered

Please provide your views below:

Please provide your views below:

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

Not Answered

Please provide your views below:

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

Not Answered

Please provide your views below:

I am opposed to commercial forms of surrogacy. I am opposed to paid surrogacy because it increases the risk of exploitation of woman and the sale of children.

81 Consultation Question 73:

Please provide your views below:

I am opposed to commercial forms of surrogacy. I am opposed to paid surrogacy because it increases the risk of exploitation of woman and the sale of children.

82 Consultation Question 74:

Please provide your views below:

I am opposed to commercial forms of surrogacy. I am opposed to paid surrogacy because it increases the risk of exploitation of woman and the sale of children.

83 Consultation Question 75:

Please provide your views below:

I am opposed to commercial forms of surrogacy. I am opposed to paid surrogacy because it increases the risk of exploitation of woman and the sale of children.

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

I am opposed to commercial forms of surrogacy. I am opposed to paid surrogacy because it increases the risk of exploitation of woman and the sale of children.

85 Consultation Question 77:

Please provide your views below:

I am opposed to commercial forms of surrogacy. I am opposed to paid surrogacy because it increases the risk of exploitation of woman and the sale of children.

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

Please provide your views below:

Please provide your views below:

Not Answered

Please provide your views below:

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

I am opposed to commercial forms of surrogacy. I am opposed to paid surrogacy because it increases the risk of exploitation of woman and the sale of children.

89 Consultation Question 81:

Please provide your views below:

90 Consultation Question 82:

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

Please provide your views below:

I am opposed to commercial forms of surrogacy. I am opposed to paid surrogacy because it increases the risk of exploitation of woman and the sale of children.

Not Answered

Please provide your views below:

I am opposed to commercial forms of surrogacy. I am opposed to paid surrogacy because it increases the risk of exploitation of woman and the sale of children.

Please provide any views below:

91 Consultation Question 83:

Please provide views below:

Not Answered

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Not Answered

Please provide your views below:

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

I am opposed to commercial forms of surrogacy. I am opposed to paid surrogacy because it increases the risk of exploitation of woman and the sale of children.

95 Consultation Question 87:

Please provide your views below:

I am opposed to commercial forms of surrogacy. I am opposed to paid surrogacy because it increases the risk of exploitation of woman and the sale of children.

96 Consultation Question 88:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

N/A

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:

N/A

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear

how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

N/A

100 Consultation Question 92: We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?

No

Please provide your views below:

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

N/A

102 Consultation Question 94:

No

Please provide your views below:

No

Please provide your views below:

Yes

Please provide your views below:

No

Please provide your views below:

Please provide your views below:

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

Not Answered

Please provide your views below:

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

N/A

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Not Answered

Please provide your views below:

106 Consultation Question 98: We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood. Do consultees agree?

Not Answered

Please provide your views below:

I do not agree with the proposals for the 'new pathway'

107 Consultation Question 99:

No

Please provide your views below:

108 Consultation Question 100:

Please provide your views below:

N/A

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Not Answered

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

N/A

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

N/A

Please provide your views below:

N/A

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

N/A

123 Consultation Question 115:

Please provide your views below:

N/A

Please provide your views below:

N/A

124 Consultation Question 116:

Not Answered

Please provide your views below:

N/A

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

N/A

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

The consultation is very long and does not ask any overview questions about surrogacy. Changes in the law could have highly detrimental effects on the human rights of children and women. As the UN Special Rapporteur highlights, there is no 'right to a child' under international law, a child is not a good or service the state can guarantee. The notion of a 'right to a child' undermines the premise of children with human rights.

The 'new pathway' proposed violates many of the recommendations from the UN Special Rapporteur, which have been made in order to reduce the risk of exploitation of women and sale and trafficking of women. Including "Ensure that in all parentage and parental responsibility decisions involving a surrogacy arrangement, a court or competent authority makes a post-birth best interests of the child determination, which should be the paramount consideration"

<https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Commercial surrogacy significantly increases the risk that women will be coerced and exploited for financial benefit. These considerations need to be much more carefully considered by the law commissioners.

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

-

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Surrogate
- Intended parent
- Person born of a surrogacy arrangement
- Family member of a surrogate
- Family member of an intended parent
- Legal practitioner
- Medical practitioner or counsellor
- Social worker
- Academic
- Other individual - yes

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

-

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

(1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and

(2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and

(3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

- 1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

- 1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

- 1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;

- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in

surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or

parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Paragraph 8.77

Consultation Question 17.

1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

- 1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

- 1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

- 1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

- 1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogacy arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Response ID ANON-2V7F-Y83Z-3

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 18:51:54

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

N/A

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Intended parent

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

N/A

Chapter 6: The parental order procedure

8 Consultation Question 1:

Not Answered

Please provide your views below:

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

I would agree with (1) - lay justices would appear to provide a level of review without unnecessarily complicating the process

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

Not Answered

Please provide your views below:

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Not Answered

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

Yes

Please provide your views below:

15 Consultation Question 8:

Yes

Please provide your views below:

Another period

Please provide your views below:

150 years

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Not Answered

Please provide your views below:

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

18 Consultation Question 11:

Yes

Please provide your views below:

19 Consultation Question 12:

Yes

Please provide your views below:

20 Consultation Question 13:

Yes

Please provide your views below:

21 Consultation Question 14:

Yes

Please provide your views below:

22 Consultation Question 15:

Yes

Please provide your views below:

No

Please share your views below:

23 Consultation Question 16:

Yes

Please provide your views below:

Yes

Please provide your views below:

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

Yes

Please provide your views below:

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

Ideally the parental order should progress assuming that the surrogate's next of kin do not object on her behalf.

26 Consultation Question 19:

Yes

Please provide your views below:

Please provide your views below:

27 Consultation Question 20:

Yes

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

29 Consultation Question 22:

Please provide your views below:

If any additional oversight is required then it should only be administrative

30 Consultation Question 23:

Please provide your views below:

31 Consultation Question 24:

Please provide your views below:

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

33 Consultation Question 26:

Yes

Please provide your views below:

34 Consultation Question 27:

Yes

Please provide your views below:

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Yes

Please provide your views below:

36 Consultation Question 29:

Please provide your views below:

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Yes

Please provide your views below:

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

39 Consultation Question 32:

Please provide your views below:

Independent surrogacy should have access to the new pathway.

Please provide your views below:

If independent surrogacy arrangements comply with the requirements of the new pathway then there should be no difference

40 Consultation Question 33:

Yes

Please provide your views below:

Yes

Please provide your views below:

Yes

Please provide your views below:

41 Consultation Question 34:

representing the organisation to, and liaising with, the regulator;; ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;; providing data to the regulator and to such other person as required by law.

Please provide your views below:

All of the above are reasonable responsibilities that someone needs to take on with in any organisation but I don't believe that all of those responsibilities should have to reside in the same person

Please provide your views below:

Please provide your views below:

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Yes

Please provide your views below:

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Yes

Please provide your views below:

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

All surrogacy matching and facilitation should only be performed by regulated organisations, to help protect all involved

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Yes

Please provide your views below:

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Not Answered

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

Other

Please provide your views below:

As per previous questions, matching and facilitating should only be offered by not-for-profit organisations

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

Yes

Please provide your views below:

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Yes

Please provide your views below:

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

55 Consultation Question 47:

Yes

Please provide your views below:

Yes

Please provide your views below:

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

57 Consultation Question 49:

Yes

Please provide your views below:

Please provide your views below:

Ideally the child should have access to counselling as per (2) but I don't believe that the child should be prevented from accessing the information if they still want to regardless of the view of the counsellor or legal parents

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

This would be sensible as per the HFEA approach with egg and sperm donation, though the genetic relationship is more important in this regard.

59 Consultation Question 51:

Other

Please provide your views below:

This would only be true for traditional surrogacy. In this case it should be treated in the same way as a donated egg, in that people can contact the HFEA to check for genetic relationships.

Please provide your views below:

Yes

60 Consultation Question 52:

Please provide your views below:

Yes - regardless of the surrogate's view once the child has reached 18, this should be the same as for donated eggs and sperm (my understanding is that once 18 the child would have the right to access identifying information about the donors)

Please provide your views below:

Yes

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

Yes

63 Consultation Question 55:

Yes

Please provide your views below:

Yes

Please provide your views below:

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

Yes

Please provide your views below:

Please provide your views below:

65 Consultation Question 57:

Please provide your views below:

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Yes

Please provide views below:

67 Consultation Question 59:

Yes

Please provide views below:

Please provide views below:

Not Answered

Please provide views below:

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

Yes

Please provide your views below:

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

Yes

Please provide views below:

70 Consultation Question 62:

Please provide your views below:

Please provide your views below:

71 Consultation Question 63:

Yes

Please provide your views below:

Please provide your views below:

Yes

Please provide your views below:

72 Consultation Question 64:

Yes

Please provide your views below:

Please provide your views below:

Yes

Please provide your views below:

73 Consultation Question 65:

Yes

Please provide your views below:

Yes

Please provide your views below:

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Yes

Please provide your views below:

Please provide your views below:

75 Consultation Question 67:

Yes

Please provide your views below:

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Yes

Please provide your views below:

77 Consultation Question 69:

Yes

Please provide your views below:

Please provide your views below:

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

No

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

Yes

Please provide your views below:

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

based on costs actually incurred by the surrogate, but without the need for production of receipts; or

Please provide your views below:

81 Consultation Question 73:

Please provide your views below:

Intended parent should be able to pay any additional cost associated with the pregnancy, it is probably not possible to provide an exhaustive list.

82 Consultation Question 74:

Please provide your views below:

Intended parent should be able to pay any additional cost associated with the pregnancy, it is probably not possible to provide an exhaustive list.

83 Consultation Question 75:

Please provide your views below:

Intended parent should be able to pay any additional cost associated with the pregnancy, it is probably not possible to provide an exhaustive list.

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

Yes, this is a cost of the pregnancy

85 Consultation Question 77:

Please provide your views below:

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

Please provide your views below:

Any compensation should be with the intent that the surrogate is not out of pocket following the pregnancy

Please provide your views below:

Any compensation should be with the intent that the surrogate is not out of pocket following the pregnancy

left to the parties to negotiate.

Please provide your views below:

Any compensation should be with the intent that the surrogate is not out of pocket following the pregnancy

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

Life assurance would seem to be a sensible requirement for any agreement but this should be agreed between the surrogate (and their family) and intended parents as part of the agreement

89 Consultation Question 81:

Please provide your views below:

A modest / reasonable level of gift could be appropriate but this could be open to abuse

90 Consultation Question 82:

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

Please provide your views below:

Not Answered

Please provide your views below:

Please provide any views below:

91 Consultation Question 83:

Please provide views below:

Not Answered

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Yes

Please provide your views below:

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

95 Consultation Question 87:

Please provide your views below:

96 Consultation Question 88:

Yes

Please provide your views below:

Yes

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Yes

Please provide your views below:

It should be the same for any new parents

111 Consultation Question 103:

Please provide your views below:

The intended parents should be entitled to the same level of parental leave as any new parents

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

This wouldn't seem to be required for intended parents, though if the intended mother is intending to induce lactation then she should be treated in the same way as any nursing mother.

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

The intended parents should be entitled to the same level of parental leave as any new parents

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response
- This is a response on behalf of an organisation
- Other

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Surrogate
- Intended parent
- Person born of a surrogacy arrangement
- Family member of a surrogate
- Family member of an intended parent
- Legal practitioner
- Medical practitioner or counsellor

- Social worker
- Academic
- Other individual

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Consultation Question 8.

- 1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the ‘new pathway’ and regulated surrogacy organisations.

- 1.9 We invite consultees’ views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

- 1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

- 1.11 We invite consultees’ views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the ‘new pathway.’

Paragraph 8.22

Consultation Question 11.

1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the ‘intended parents’ should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur’s recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child’s best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the ‘new pathway’ – particularly with the ‘intended parents’ acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child’s best interest being the paramount consideration, in accordance with the UN Special Rapporteur’s recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the ‘new pathway’ – particularly the ‘intended parents’ acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child’s best interest being the paramount consideration, in accordance with the UN Special Rapporteur’s recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Consultation Question 15.

- 1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

- 1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the ‘new pathway’ – particularly the ‘intended parents’ acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the ‘intended parents’ being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Paragraph 8.77

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:
 - (a) administrative, or
 - (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the ‘new pathway’. I do not agree that the ‘intended parents’ should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the ‘intended parents’ parental responsibility is based on (or justified by) the wishes expressed by some ‘surrogate’ mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the 'intended parents' should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women's reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees' views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and
- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as ‘surrogates.’

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees’ views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women’s prostitution.

Paragraph 9.135

Consultation Question 42.

1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other ‘service’ organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a ‘surrogate’ mother would be a solution to an impoverished woman’s financial problems. If this proposal is implemented, Facebook and Google are likely to present surrogacy ads to female students and young women suggesting that becoming a ‘surrogate’ would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

- 1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

- 1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the ‘new pathway’. I do not agree that the ‘intended parents’ should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the ‘intended parents’ are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

- 1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

- 1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

- 1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

- 1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

- 1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the ‘new pathway’. The ‘intended parents’ should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees’ views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to ‘intended parents’ who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees’ views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Paragraph 12.64

Consultation Question 60.

- 1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

- 1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the ‘new pathway’.

1.88 We invite consultees’ views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the ‘new pathway’.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.29

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a

surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Consultation Question 80.

1.105 We invite consultees views' as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the ‘new pathway’.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the ‘new pathway’. The idea that a ‘surrogacy agreement’ could place restrictions on the birth mother’s lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children’s rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the ‘intended parents’ to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur’s recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

(1) the grant of a visa should not be dependent on the child breaking links with the surrogate;
or

(2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the ‘intended parents’ to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur’s recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother maybe being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself. There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents

to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other countries.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother maybe being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and
- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations

between the different generations. Imagine the rage that young people may feel when they discover that their ‘parents’ not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners’ ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that ‘procreative liberty’ confers some kind of human right to surrogacy and the idea that a woman has a human right to be a ‘surrogate.’ These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the ‘new pathway’ violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother’s choice to transfer the child “must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation.”
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government’s consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women’s and children’s human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 18:58:15

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

[REDACTED]

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Legal practitioner

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

Please provide your views below:

Do not agree with this proposal; this is specialist work and the lower courts are currently insufficiently funded and supported. Also there are restrictions on legal aid which will affect access.

9 Consultation Question 2:

Please provide your views below:

The High Court

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

Experience of the magistrates' court over thirty years leads me to conclude that the courts - particularly as a result of cuts to the Justice budgets - are inappropriate to handle the complexities of such cases.

There also needs to be a duty to give reasons.

11 Consultation Question 4:

No

Please provide your views below:

Experience of procedure over many years and in many fields raises the spectre of this becoming a purely administrative act and a mere formality.

There also needs to be a duty to give reasons.

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

No

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

No

Please provide your views below:

These agreements are currently unlawful in the UK and we should not go down the road to legalising them.

Principles of contract law are open to restatement and inappropriate here.

There could easily be clear disparities in the capacity to litigate here over any dispute.

15 Consultation Question 8:

No

Please provide your views below:

From experience commercial factors can easily undermine duties to keep records; insufficient consideration is given to this danger.

Not Answered

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

No

Please provide your views below:

More consideration needs to be given to the ultimate impact upon the well-being of the child.

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

See answer to 16 above

18 Consultation Question 11:

No

Please provide your views below:

The danger is that these will turn into consumer contracts, with major disparities in bargaining power between parties.

19 Consultation Question 12:

No

Please provide your views below:

The problem lies in trying to extend contract and consumer principals (the nearest analogy) to the complexities of human beings, including a child

20 Consultation Question 13:

No

Please provide your views below:

Capacity is a very complex and difficult area

21 Consultation Question 14:

No

Please provide your views below:

The lack of requirement for any welfare assessment after birth would turn it into an unregulated experiment

22 Consultation Question 15:

No

Please provide your views below:

Evidence points to children progressing better with two parents than one.

Not Answered

Please share your views below:

23 Consultation Question 16:

No

Please provide your views below:

The biology of the situation needs to be recognised in terms of treatment and preventative measures for the parties as appropriate

No

Please provide your views below:

See 23

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

No

Please provide your views below:

No, the biological realities need to be fully recognised

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

See answer to 24

26 Consultation Question 19:

No

Please provide your views below:

This would create potential problems in terms of the law of succession

Please provide your views below:

27 Consultation Question 20:

Not Answered

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

No, this is too complex an experiment to attempt and open to all kinds of problems; the risk of eugenics given the present advances in gene technology.

29 Consultation Question 22:

Please provide your views below:

There should be both administrative and judicial oversight in areas such as this

30 Consultation Question 23:

Please provide your views below:

The legislation is 30 years old and needs updating

31 Consultation Question 24:

Please provide your views below:

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

33 Consultation Question 26:

Not Answered

Please provide your views below:

34 Consultation Question 27:

No

Please provide your views below:

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Not Answered

Please provide your views below:

36 Consultation Question 29:

Please provide your views below:

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

Not Answered

Please provide your views below:

The problem is that surrogates (who will all be female) will often be at a financial disadvantage with inequality of bargaining power and more likely to be subject to duress.

it is possible to foresee a problem with vulnerable women and those trafficked into the UK.

81 Consultation Question 73:

Please provide your views below:

82 Consultation Question 74:

Please provide your views below:

83 Consultation Question 75:

Please provide your views below:

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

85 Consultation Question 77:

Please provide your views below:

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

Please provide your views below:

Please provide your views below:

Not Answered

Please provide your views below:

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

89 Consultation Question 81:

Please provide your views below:

90 Consultation Question 82:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Please provide any views below:

91 Consultation Question 83:

Please provide views below:

Not Answered

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Not Answered

Please provide your views below:

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

95 Consultation Question 87:

Please provide your views below:

96 Consultation Question 88:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Not Answered

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

Yes, they will be based upon experience; real life always throws up situations and claims in this regard that legislators cannot foresee

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

- This is a personal response

4. If responding to this consultation in a personal capacity, which term below best describes you?

- Other individual

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

- 1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

- 1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

- 1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

- 1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and

parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth

and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

- 1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

- 1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

- 1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

- 1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogacy arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;

- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit.

There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Response ID ANON-2V7F-Y83C-C

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 19:10:18

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

Surrogacy UK

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Intended parent

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

With the exception of contact details I'm happy for my views to be shared.

Chapter 6: The parental order procedure

8 Consultation Question 1:

Other

Please provide your views below:

I don't have a view on the international process.

Please provide your views below:

N/a

9 Consultation Question 2:

Please provide your views below:

Those cases that still require a post birth parental order should still be heard at the existing level. However, i would strongly advocate for parental order to come into force at time of birth rather than for any prolonged period after, unless there is a specific and clear reason.

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

As an intended parent, and with our surrogate pregnant at the moment, we feel we are well placed to have a view on the parental order process. The PO process should be primarily to safeguard the child born through surrogacy. At present the delay to issuing the PO means an effective set of workarounds are in place whereby our surrogate will provide us with personal letters indicating we are true parents of the child, and that for matters of medical care, as an example, we should be engaged primarily. These letters rely upon medical professionals being au fait with surrogacy/surrogacy law, and in that rare occasion when they don't feel comfortable in following the letter, this could delay medical care to the child.

The other use of the PO, I believe, is to safeguard the surrogate from being "forced" to "give up" a child. I would strongly urge the commission to lean most heavily on the views of UK surrogates on this portion of their consideration. There has not been a single surrogate we have spoken with at SUK who ever feels they are giving up their child. For them the responsibility for the child after birth is not a responsibility they want. Delaying the PO as is current process is adding undue stress and bureaucracy that they simply don't want.

11 Consultation Question 4:

Yes

Please provide your views below:

The PO should be granted as early as practicably possible.

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Yes

Please provide your views below:

Agree

13 Consultation Question 6:

Please provide your views below:

I'm not aware of the Scottish process.

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

Yes

Please provide your views below:

This is absolutely the correct approach. As somebody deeply involved in Surrogacy this is the right approach for Intended parents and the child, and understanding the views of our surrogate friends is exactly what they want to see happen.

15 Consultation Question 8:

Yes

Please provide your views below:

100 years; or

Please provide your views below:

I see no reason why the records wouldn't be kept for a significant of time. All IPs that we know are fully transparent to their children, friends and family about their surrogacy relationship, and have close and continuing bonds with the surrogate and her family who have helped bring about the child. The records shouldn't be viewed as a secret to be shredded after a finite period, but are a documentation of a fantastic friendship.

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

No

Please provide your views below:

Whilst my wife and I and our surrogate and her family wish to have a fully transparent relationship with our child, I don't think it is right that anonymous egg donation is prohibited. Not all donors want a future relationship, but do want to provide struggling couples with help. Forcing them to provide

identities may drive them away from helping, which seems unfair and an unnecessary over regulation.

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

Same as answer 16 but from a male perspective. It should be possible for anonymous donations to be included in the new pathway.

18 Consultation Question 11:

Yes

Please provide your views below:

I think this is fair. I would also suggest that there should be a pre birth window whereby the surrogate can raise objection. This would be particularly relevant where the surrogate feels the welfare of the child would be at risk.

19 Consultation Question 12:

Yes

Please provide your views below:

This is appropriate and should follow the current PO model.

20 Consultation Question 13:

Yes

Please provide your views below:

21 Consultation Question 14:

Yes

Please provide your views below:

22 Consultation Question 15:

Other

Please provide your views below:

Essentially yes I agree, however I this instance who would be noted as the child's father?

No

Please share your views below:

It seems illogical given the known process of conception had no involvement of the surrogates partner that they should be added to "paperwork".

23 Consultation Question 16:

Yes

Please provide your views below:

Yes

Please provide your views below:

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

Yes

Please provide your views below:

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

That would be a heartbreaking situation, and would be a distressing time for the surrogate's partner/family. This would be why I would open the window to object to pre birth as well. If no objections had been raised up til the tragic event at birth, then the new pathway should automatically be followed.

26 Consultation Question 19:

Yes

Please provide your views below:

And through the wills in place for the IPs arrangements for ongoing care of the child should be clear. There should not be a situation where the surrogate is expected to look after the child.

Please provide your views below:

Per previous answer, the care of the child should be dictated by the wills of the IPs

27 Consultation Question 20:

Yes

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

I think a 3 parent model is needlessly complex. The single or couple of IPs should be noted as parents from birth. Where this new pathway isn't followed, then the expectation is that this is due to a challenge by the surrogate on the fitness of the IPs to parent. If this holds true then it doesn't seem right in this instance to offer them parental right through a third name until the situation has been properly resolved.

29 Consultation Question 22:

Please provide your views below:

None

30 Consultation Question 23:

Please provide your views below:

No

31 Consultation Question 24:

Please provide your views below:

No

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

I have no view

33 Consultation Question 26:

Yes

Please provide your views below:

Absolutely correct

34 Consultation Question 27:

Yes

Please provide your views below:

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

No

Please provide your views below:

The responsibility should reside with the IPs not the surrogate.

36 Consultation Question 29:

Please provide your views below:

No - full parental rights should extend from birth under the new pathway.

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Yes

Please provide your views below:

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

Our journey has been through Surrogacy UK so I cannot comment on independent journeys.

39 Consultation Question 32:

Please provide your views below:

Yes they should. We have friends who have been on independent journeys

Please provide your views below:

N/a

40 Consultation Question 33:

Yes

Please provide your views below:

Our experience of Surrogacy UK has been 100% positive. They are run for the protection of all in the process - particularly the vulnerable whether they be surrogates, children or IPs who have been through traumatic times. Safeguards around Get To Know periods, and rules around breaks between journey are hugely cool off points to make sure everyone takes their time and makes sensible decisions free of emotions. They provide an army of support for everyone in the organisation IPs and Surrogates alike, and provide a framework for the ongoing friendships that form, so that children born through surrogacy can see and appreciate the love and warmth of the friendships that brought them to be.

No

Please provide your views below:

I think it's very important that we don't end up with a plethora of organisations created that engenders a "Marketplace" feel and pushes/lobbies unwisely for a commercial model.

Yes

Please provide your views below:

41 Consultation Question 34:

representing the organisation to, and liaising with, the regulator,, managing the regulated surrogacy organisation with sufficient care, competence and skill;; ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;; training any staff, including that of the person responsible; and, providing data to the regulator and to such other person as required by law.

Please provide your views below:

All of the above, or through an agreed and appropriate delegation

Please provide your views below:

Ethics...

Please provide your views below:

Difficult to say. I would expect an experience of surrogacy either as a surrogate or an IP but this shouldn't preclude somebody who has a body of understanding and has invested time in learning about the field.

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Yes

Please provide your views below:

100% agree. There should be no monetisation of what is a gift. This protects surrogates from exploitation.

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

This should be left up to the individual organisations. Some - such as COts proactively try to match. This may work where a surrogate wants to help but doesn't want the pressure having to "choose" or where IPs are less socially comfrobale in making connections. SUK however has an open model where any surrogates and IPs can talk and see if they want to develop their friendship. We met our surrogate as a Friend when she was 5 months pregnant and we stayed friends without hope or expectation that she would offer to help us, until a year later when she offered and we'd already become good friends. Nobody matched us - we met and spoke in a social event!

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Yes

Please provide your views below:

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

Yes

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

I think it would be depend on what had happened. If they are breaking the law they should be stopped from operating.

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Yes

Please provide your views below:

Please provide your views below:

.

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Yes

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

Introducing an agency concept and “fees” is a bad model that will prey upon vulnerable IPs who have often had traumatic paths to surrogacy and are desperate. This was the case with our own journey after multiple miscarriages, and the loss of twins. At that time we’d have paid anything to find someone to “carry a baby”. The SUK model whereby you join as a non member (for free), go to socials, meet people in the same situation, talk about your experiences and slowly heal, made us much better mentally to be able to go on a surrogacy journey. The desperation subsided and we knew we wanted a friend in our lives forever as a result of this, not just a “womb to rent”. If we’d be able to pay a fee to get a match straightaway we’d have made a huge mistake, and one which wouldn’t have benefitted us, our surrogate or child.

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

Yes

Please provide your views below:

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

No

Please provide your views below:

Absolutely not. It should be up to the child in future whether they want to disclose this fact to for example future employers or partners. Why would we forcibly “stamp” this child with a marker for life? What is the benefit??

53 Consultation Question 45: We invite consultees’ views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court’s file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

55 Consultation Question 47:

No

Please provide your views below:

It all gamete donors want to be known, and wouldn’t do it if they were forced to be known.

No

Please provide your views below:

As per previous answer.

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

No

57 Consultation Question 49:

Yes

Please provide your views below:

Please provide your views below:

No - it should only be once the child has reached an age at which they can truly understand any ramifications.

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

Why? There is no genetic relationship simply because they are carried by the same surrogate. I find this a very bizarre question and slightly concerning lack of knowledge of surrogacy.

Is there a requirement for individuals to have a genetic test incase their father had an affair with the others mother?

59 Consultation Question 51:

Other

Please provide your views below:

They should have access to their details anyway

Please provide your views below:

I wouldn't see this being necessary - everyone we know in this journey is friend with any previous surrogacy IPs anyway so all the kids grow up knowing g each other.

60 Consultation Question 52:

Please provide your views below:

I don't see why this would be needed as we would fully expect our surrogates family to be in ours and our child's life forever.

Please provide your views below:

As above.

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

Yes - in the same way as a father who leaves a mother and child is still noted as the father.

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

Yes - per previous answers this period doesn't safeguard the interests of the child or the surrogate.

63 Consultation Question 55:

Yes

Please provide your views below:

Yes

Please provide your views below:

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

Yes

Please provide your views below:

Please provide your views below:

There should be a defined period to stop foreign nationals taking advantage of the UK system for personal gain with. I expectation of a lasting relationship with their uk surrogate.

65 Consultation Question 57:

Please provide your views below:

.

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Yes

Please provide views below:

Obviously. How would the child not live with them.?

67 Consultation Question 59:

Yes

Please provide views below:

Please provide views below:

Not Answered

Please provide views below:

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

Yes

Please provide your views below:

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

Yes

Please provide views below:

70 Consultation Question 62:

Please provide your views below:

SUK already require that IPs have a medical need - this is through a doctors letter.

Please provide your views below:

Doctors letter should suffice.

71 Consultation Question 63:

Other

Please provide your views below:

I don't necessarily think that donors who wish to remain anonymous should be forced to be identified. The IPs and surrogate should be listed though

Please provide your views below:

Per previous answers on the same theme. Gamete donors (aside from the IPs) should be allowed to remain anonymous if that's their desire.

Yes

Please provide your views below:

72 Consultation Question 64:

Yes

Please provide your views below:

Please provide your views below:

No it should be at the discretion of surrogate and IPs

Yes

Please provide your views below:

73 Consultation Question 65:

Yes

Please provide your views below:

Yes

Please provide your views below:

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Yes

Please provide your views below:

Please provide your views below:

.

75 Consultation Question 67:

Yes

Please provide your views below:

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

No

Please provide your views below:

This will simply introduce additional cost to the process that is not required if a proper organisation such as SUK is involved. It should perhaps be a requirement if there is an independent journey.

77 Consultation Question 69:

Yes

Please provide your views below:

Please provide your views below:

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

No - plenty of amazing surrogates that we know don't have their own children but have been on multiple successful journeys

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

Yes

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

Surrogate spouse should receive a statutory period of leave to help support post child birth
IPs should have access to standard maternity and paternity leave, and private organisation should all have a policy to support this.

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

No

Please provide your views below:

Shared parental leave should be available exactly as it is for non surrogacy births

111 Consultation Question 103:

Please provide your views below:

The rules should be the same as for non surrogacy pregnancies. We attend the same medical appointments, and need to take time off approaching birth so as to ensure we don't miss the big day.

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

It's sufficient.

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

None

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

No

115 Consultation Question 107:

Please provide your views below:

Not all hospitals and medical staff are sympathetic to surrogacy and broader education and standards on How deal with for example 3 people in an exam room for scans, or shows allowed in the room during birth would be prudent.

Please provide your views below:

.

Please provide your views below:

Our experience with midwifery in our surrogates home town has been positive. We've been thoroughly engaged in the process and as a key part of the team we've built a great relationship with the midwife who'll be supporting our surrogate throughout.

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

I would implore the commission reviewing the responses to heavily weight the views of those who have direct experience of surrogacy - either as a surrogate, or surrogate family, a child of surrogacy, IPs or the organisations that support surrogacy in the UK. Reform to the surrogacy model should be to protect those individuals first and foremost.

There are many alternate views that are vociferously put forward on the internet that are breathtakingly ignorant in their understanding of what surrogacy in the UK is really like. They are full of inaccuracy and hyperbole. The views they expressed should be heavily qualified until they can express evidence behind their beliefs.

The surrogates and Intended Mother's I have met through surrogacy UK are the most incredible women I have ever met. They have a strength of character, determination and compassion that I didn't know existed until I explored surrogacy further.

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Other individual

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[REDACTED]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so

the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

- 1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

- 1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

- 1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

- 1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and

parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth

and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 19:26:08

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

None

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Other individual

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

N/a

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

There is a history of international surrogacy abuse particularly with poorer surrogate mothers and/or from poor countries and exploitation and a high level of scrutiny should be maintained.

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

All international surrogacy cases should require a legal parental order post-birth and be dealt with at the current level of the judiciary, so that parental order processes, involving qualified social work assessments can take place.

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

Not Answered

Please provide your views below:

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Yes

Please provide your views below:

The parental order report should be released to the parties in the proceedings by default. The circumstances under which a court can decide otherwise should be clarified.

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

No

Please provide your views below:

This would reduce the birth mother to a vessel, a container, such knowledge of which would be detrimental to the mental health of the child, and against the healthy formation of their identity. This proposal weakens the surrogate's right to change her mind.

15 Consultation Question 8:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Yes

Please provide your views below:

The prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements, otherwise this limits the right of the child to discover their genetic identity and may risk attraction to closely related persons.

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

The surrogate should have the right to object to the acquisition of legal status by the Intended Parents immediately after the birth and before the baby is handed over. This consultation takes no account of the natural link between birth mother and baby and assumes an immediate hand-over, whether the birth mother objects or not. The birth mother should have the right to change her mind. It is my firm belief that a baby, particular a newborn (in the "fourth trimester") needs his or her mother. They are used to her heartbeat.

18 Consultation Question 11:

Not Answered

Please provide your views below:

19 Consultation Question 12:

Not Answered

Please provide your views below:

20 Consultation Question 13:

Not Answered

Please provide your views below:

21 Consultation Question 14:

Not Answered

Please provide your views below:

22 Consultation Question 15:

Not Answered

Please provide your views below:

Not Answered

Please share your views below:

23 Consultation Question 16:

No

Please provide your views below:

I oppose the proposal that the commissioning parents should be the legal parents of a stillborn baby. Their disappointment will be diminished by the grief of the birth mother who already has a relationship with the child in her womb. What safeguards are planned in the new pathway should the woman surrogate die? What financial protections would there be for the woman's existing children and family?

Not Answered

Please provide your views below:

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

Not Answered

Please provide your views below:

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

26 Consultation Question 19:

Not Answered

Please provide your views below:

Please provide your views below:

27 Consultation Question 20:

Not Answered

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

29 Consultation Question 22:

Please provide your views below:

The surrogacy business should be banned not made easier. There is no evidence in the proposed changes that the surrogacy business, which benefits Agencies, lawyers and those commissioning a surrogate (who is expected to carry a child as an altruistic act) should be made easier for those who profit. The evidence points to banning or severely restricting surrogacy practices as has been done in European countries such as Switzerland, France, Germany and Sweden and further afield in India and Thailand.

30 Consultation Question 23:

Please provide your views below:

31 Consultation Question 24:

Please provide your views below:

It is remarkable given the years of current surrogacy enablement in UK that those involved are not, never have been, subject to Adoption and Child Act (ACA) 2002.

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

33 Consultation Question 26:

Not Answered

Please provide your views below:

34 Consultation Question 27:

No

Please provide your views below:

I disagree with the provisional proposal that, where a child is born of a surrogacy arrangement, the Intended Parents should acquire parental responsibility on the birth of the baby. This pathway will take no account of, and fails to recognise, the bond which is formed between mother and baby during and after the gestational period and the right of a child to know the identity of their birth mother.

This pathway will favour the Intended Parents and the removes the right of the child to have a biologically accurate birth record.

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Yes

Please provide your views below:

The birth mother should retain parental responsibility for the child until the expiry of the period during which she can exercise her right to object.

36 Consultation Question 29:

Please provide your views below:

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Not Answered

Please provide your views below:

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

The views of independent surrogates are unlikely to be well represented, particularly overseas surrogates, mainly poor and uneducated and often exploited.

39 Consultation Question 32:

Please provide your views below:

Please provide your views below:

40 Consultation Question 33:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

41 Consultation Question 34:

Please provide your views below:

Please provide your views below:

Please provide your views below:

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Not Answered

Please provide your views below:

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Not Answered

Please provide your views below:

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Not Answered

Please provide your views below:

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Not Answered

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

Not Answered

Please provide your views below:

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

Not Answered

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

[Name of organisation if relevant.]

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Other individual

5. What is your email address?

Email address:

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential.

As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Consultation Question 3.

- 1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

- 1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

- 1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

- 1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and

parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

Is there provision for an independent mental capacity assessment to ensure that the woman has understood the information, retained that information and use it to make an informed decision? Mental capacity of the woman carrying a child should not rely on the belief of the intended parents.

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be

introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Paragraph 8.77

Consultation Question 17.

1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

none of the above

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

None

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 19:56:49

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Other individual

5 What is your email address?

Email address:

6 What is your telephone number?

Telephone number:

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Commercial surrogacy should be banned in all circumstances. There is no reason why anyone should be able to rent a woman's body and buy a baby. It goes against every basic human right and loopholes for 'expenses' will continue to be used ensuring that payment is used as a form of coercion. This cannot in a civilised society be allowed to continue just as we don't allow the sale of organs or payment for patients in clinical trials.

Chapter 6: The parental order procedure

8 Consultation Question 1:

Not Answered

Please provide your views below:

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

Not Answered

Please provide your views below:

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Not Answered

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

From: [REDACTED]
To: [surrogacy](#)
Subject: Surrogacy Consultation
Date: 10 October 2019 12:35:44

Whilst I understand the instinctive desire to have a baby, it is not a right, but a privilege.

In addition, I feel that surrogacy is just another way for men to use and commodify women's bodies; heterosexual men use us for sex, prostitution, forced marriage, rape, pornography, whilst homosexual men, often seem to hate women, but still want to use us as breeding machines. They use donor eggs, to deliberately create a motherless child. From the child's point of view, I believe this is morally and ethically wrong. They are robbing the child of ever knowing who their biological mother is. If you think this isn't important, try watching an episode of Long Lost Family, and the reactions of adopted adults, when they are finally reunited with their biological mothers.

Pregnancy is a huge undertaking for women and often has detrimental affects on women's health, sometimes for the remainder of their lives. Indeed, I read of a recent case where the surrogate actually died! I do not think women should be encouraged or pressured into becoming a surrogate.

I really feel there is an anti-woman attitude/atmosphere at the moment, and that it is a dangerous time to be a woman, as I see our legal rights and protections being undermined. I am concerned that surrogacy is detrimental to women, and that the cost to women is really being ignored.

Meanwhile, the law helps trans id men to get legal status as woman (or be treated as though they have legal status as women, even though they don't) and colonise our sex segregated spaces, taking over the sex class of 'woman', and undermining our safeguarding protections. Seems like those in power (mainly men) are falling over themselves to allow other men to do exactly as they please with women. We are not seen as human beings in our own right, but as the possessions of men. Introduction of the GRA, was just another example of the cost to women being ignored.

When will the Government look into male attitudes to women, and start to promote the view that women should be respected and valued? When will the law start to work for women? Rape is virtually decriminalised now - not sure I'd even bother to go to the police, if it was me. We have the police arresting a woman in her own home, in front of her children, for calling a man, a man - for naming him and talking about the fact he has a conviction for beating up another man with a golf club! I've seen countless pictures online of these 'men in dresses' threatening women with baseball bats, rape etc, merely for not accepting these men as women, and we are expected to share toilet & changing room spaces with these individuals. The Old Vic Theatre, crowd funded, saying they'd use the money to increase their toilet provision for women, but instead they've built mixed-sex toilets - women and children are expected to queue alongside the urinals!!!

When will the UK Government remember that we women are 50% of the population, and actually consult with us on matters which directly affect us, instead of quietly passing laws that undermine us, without telling us!!!

Virtually nobody I know, knew anything about this Surrogacy Consultation, same with the Gender Self ID Consultation. Quite honestly, women deserve better!!!



Response ID ANON-2V7F-Y8YT-3

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 19:57:19

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

Surrogacy UK

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Surrogate

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

Not Answered

Please provide your views below:

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

No

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

Yes

Please provide your views below:

15 Consultation Question 8:

Yes

Please provide your views below:

100 years; or

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Yes

Please provide your views below:

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

Yes - gamete donation shouldnt be anonymous

18 Consultation Question 11:

Yes

Please provide your views below:

19 Consultation Question 12:

No

Please provide your views below:

In all circumstances the IPs should remain legal parents until a court says so

20 Consultation Question 13:

Yes

Please provide your views below:

21 Consultation Question 14:

Yes

Please provide your views below:

22 Consultation Question 15:

Yes

Please provide your views below:

No

Please share your views below:

23 Consultation Question 16:

Yes

Please provide your views below:

Yes

Please provide your views below:

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

Yes

Please provide your views below:

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

26 Consultation Question 19:

Yes

Please provide your views below:

Please provide your views below:

27 Consultation Question 20:

Yes

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

29 Consultation Question 22:

Please provide your views below:

Administrative

30 Consultation Question 23:

Please provide your views below:

31 Consultation Question 24:

Please provide your views below:

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

33 Consultation Question 26:

Yes

Please provide your views below:

34 Consultation Question 27:

Yes

Please provide your views below:

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

No

Please provide your views below:

36 Consultation Question 29:

Please provide your views below:

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Yes

Please provide your views below:

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

39 Consultation Question 32:

Please provide your views below:

yes

Please provide your views below:

Checks prior to conception, agreement forms

40 Consultation Question 33:

Yes

Please provide your views below:

No

Please provide your views below:

Yes

Please provide your views below:

41 Consultation Question 34:

representing the organisation to, and liaising with, the regulator;; managing the regulated surrogacy organisation with sufficient care, competence and skill;; ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;; training any staff, including that of the person responsible; and, providing data to the regulator and to such other person as required by law.

Please provide your views below:

Please provide your views below:

Please provide your views below:

Personal experience, full understanding of surrogacy, professional, experience of safeguarding, accountability, ethical

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Yes

Please provide your views below:

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

Choosing which surrogates works with which IPs

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Yes

Please provide your views below:

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Yes

Please provide your views below:

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Yes

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

Yes

Please provide your views below:

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

Yes

Please provide your views below:

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth

certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Yes

Please provide your views below:

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

55 Consultation Question 47:

Yes

Please provide your views below:

Yes

Please provide your views below:

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

57 Consultation Question 49:

Yes

Please provide your views below:

Please provide your views below:

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

59 Consultation Question 51:

Yes

Please provide your views below:

Please provide your views below:

60 Consultation Question 52:

Please provide your views below:

Please provide your views below:

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

yes

63 Consultation Question 55:

Yes

Please provide your views below:

Yes

Please provide your views below:

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

Yes

Please provide your views below:

Please provide your views below:

65 Consultation Question 57:

Please provide your views below:

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Yes

Please provide views below:

67 Consultation Question 59:

Yes

Please provide views below:

Please provide views below:

Yes

Please provide views below:

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

Yes

Please provide your views below:

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

Yes

Please provide views below:

70 Consultation Question 62:

Please provide your views below:

Please provide your views below:

Specialist referral

71 Consultation Question 63:

Yes

Please provide your views below:

Please provide your views below:

Yes

Please provide your views below:

72 Consultation Question 64:

Yes

Please provide your views below:

Please provide your views below:

Yes

Please provide your views below:

73 Consultation Question 65:

Yes

Please provide your views below:

Yes

Please provide your views below:

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Yes

Please provide your views below:

Please provide your views below:

75 Consultation Question 67:

Yes

Please provide your views below:

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

No

Please provide your views below:

Eligibility can be checked administratively by surrogacy organisations

77 Consultation Question 69:

Yes

Please provide your views below:

Please provide your views below:

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

No - so long as she is counselled, informed and able to consent

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

Yes

Please provide your views below:

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

based on costs actually incurred by the surrogate, but without the need for production of receipts; or

Please provide your views below:

81 Consultation Question 73:

Please provide your views below:

82 Consultation Question 74:

Please provide your views below:

83 Consultation Question 75:

Please provide your views below:

Agree

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

Agree

85 Consultation Question 77:

Please provide your views below:

Agree

86 Consultation Question 78:

Please provide your views below:

During my first surrogacy journey my housing benefit was taken from me, as they considered my surrogacy expenses to be an income. As there was no top down guidance from DWP, it was based on the local office's opinions. I was £2000 out of pocket over the pregnancy.

87 Consultation Question 79:

Please provide your views below:

No - no compensation, only actual costs incurred by these conditions

Please provide your views below:

No - compensation payments should not be paid at all.

Any sort of payment over actual costs may increase coercion, especially to those who are vulnerable.

Surrogates should do this because they want to, not because they need to.

Not Answered

Please provide your views below:

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

Life insurance should be taken out by the surrogate prior to conception and I dont consider this to be compensation

89 Consultation Question 81:

Please provide your views below:

Agreed

90 Consultation Question 82:

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

Please provide your views below:

Absolutely not - surrogates are not providing a service.

Not Answered

Please provide your views below:

Please provide any views below:

No fixed costs

91 Consultation Question 83:

Please provide views below:

Not Answered

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Yes

Please provide your views below:

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

95 Consultation Question 87:

Please provide your views below:

96 Consultation Question 88:

Yes

Please provide your views below:

Yes

Please provide your views below:

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

100 Consultation Question 92: We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?

Not Answered

Please provide your views below:

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

102 Consultation Question 94:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Please provide your views below:

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

Not Answered

Please provide your views below:

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Not Answered

Please provide your views below:

106 Consultation Question 98: We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood. Do consultees agree?

Not Answered

Please provide your views below:

107 Consultation Question 99:

Not Answered

Please provide your views below:

108 Consultation Question 100:

Please provide your views below:

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

Yes - intended parent leave should start prior to birth not at birth

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Yes

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

Agreed

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

Agreed

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

Self employed IPs entitlement

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

Yes the new laws will make it easier for surrogates to come forward as they will not be at risk from being left with a baby. It will be easier to do surrogacy safely and there are more protections for surrogates.

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

N/A

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response
- ~~This is a response on behalf of an organisation~~
- ~~Other~~

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- ~~Surrogate~~
- ~~Intended parent~~
- ~~Person born of a surrogacy arrangement~~
- ~~Family member of a surrogate~~
- ~~Family member of an intended parent~~
- ~~Legal practitioner~~
- ~~Medical practitioner or counsellor~~
- ~~Social worker~~
- ~~Academic~~
- Other individual

5. What is your email address?

Email address:

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

As we learn more about the exchange of DNA and chemical messages between a mother and an unborn child, it becomes clear that the child born to a surrogate, even if implanted from a fertilised egg that is not her own, will be the closest there can be to a child with 3 parents. This biological reality reflects the immense complexity of the arrangement, and anything which aims to simplify or speed up the process, without taking this into account, risks making many grave ethical errors.

Nothing about the current state of the world, surrogacy, and women's rights makes me think that relaxing these laws is in any way necessary or desirable. We live in a world where poor women will always be vulnerable to abuse of many kinds. Legislation needs to protect and support them, not legalise their abuse.

Paragraph 6.53

Consultation Question 4.

1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

- 1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility

in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as

the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy

human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Paragraph 8.77

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;

- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit.

There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Response ID ANON-2V7F-YJRC-W

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 19:58:26

About you

1 What is your name?

Name:

Dr Rita D'Alton-Harrison

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

Royal Holloway, University of London

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Academic

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

The information is not confidential.

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

NB The wording of this consultation question could potentially be confusing to respondents. The question has been posed as follows: whether international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court. This is not the same thing as asking whether it should continue to be allocated to the High Court (as is the current requirement). For an explanation of the distinction, see Guidance of the President of the Family Court 28th February 2018 para 7 (Sir James Munby).

It is important that all international surrogacy arrangements continue to be heard both by an allocated judge of the High Court and also in the family division of the High Court for the following reasons:

a. It is important to note that according to the Guidance of the President of the Family Court 28th February 2018, the High Court has unlimited jurisdiction whilst the remaining courts forming part of the family court have limited jurisdiction. Given the complexity of ISAs it is important that they are heard by a court with unlimited jurisdiction in the family division of the High Court.

b. Cases such as *Re X & Y (Foreign Surrogacy)* [2008] EWHC 3030, *Re L (a minor)* [2010] EWHC 3146 and *Re IJ (A Child)* [2011] EWHC 921 all reiterate that the complex nature of ISAs that often involve considerations of commercial surrogacy and conflicts of private international law should be heard by more senior judges and therefore remain within the High Court jurisdiction alone. There is no reason to believe that ISAs have become less complex since these cases were heard.

c. As some jurisdictions continue to ban ISAs (e.g. India, Thailand etc) it is important to ensure that UK courts are not sanctioning ISAs that have been entered into in breach of the laws of another country.

d. Having all ISA cases dealt with at High Court level has allowed judges to develop the law in a consistent way and to use knowledge of the law in certain jurisdictions to inform future decision-making – for a further discussion of this see R D'Alton-Harrison, 'The Language of Collaborative Reproduction: Written Voices Reframing International Surrogacy' (2019) 14 (4) Journal of Contemporary Issues in Law, 277, 299.

e. There is at present no way to properly track international surrogacy arrangements (ISAs) other than through the number of applications made for a parental order in the High Court. This has impeded a full understanding of the growth of the market for ISAs. HMCTS does not separately log whether a surrogacy arrangement is a domestic surrogacy arrangement (DSA) or an ISA. The only mechanism that exists to trace the number of parental order ISAs is through the number of cases allocated to a judge in the High Court. Until other mechanisms are put in place to separately record the number of ISAs such cases should retain with their special status of High Court allocation.

Please provide your views below:

There is no reason why circuit judges cannot also be ticketed to hear such cases as long as HMCTS continues to track such cases and record them as ISA cases for the purpose of central records.

9 Consultation Question 2:

Please provide your views below:

Domestic Surrogacy arrangements (DSAs) can continue to be heard by lay justices as they raise less complex issues. This will continue to be the case even if the DSA does not meet the criteria for inclusion in the automatic parental order pathway. However, there is evidence to suggest that the use of social media to find surrogates is becoming a common problem as well as disputes between intended parents who separate before or after the baby has been handed over for example cases such as X and Z (A Child by his Guardian) [2016] EWFC 34; on appeal, Re M (Child) [2017] EWCA Civ 228 and also CW v NT, TT (a child, by her guardian Joanne Farnsworth) [2011] EWHC 33 (fam). As such, there is a case to be made for these more complex DSAs to be heard from a judge at County Court or High Court level.

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

S.31E(1)(a) of the Matrimonial and Family Proceedings Act 1984 only gives family proceedings courts inherent jurisdiction to make incidental or supplemental orders that could be made in the High Court but not substantive High Court jurisdiction to make certain orders – see Guidance of the President of the Family Court 28th February 2018 para 15. If judges in the family proceedings court (rather than the family division of the High Court) were permitted to hear all surrogacy cases (both domestic and international) they would need to transfer the more complex cases to the High Court. However, this would rely on the discretion of the judge and therefore DSAs and ISAs might be treated differently across the various courts in the family proceedings court.

11 Consultation Question 4:

Yes

Please provide your views below:

If the new automatic pathways do not come into effect then the courts should be placed under a duty to consider whether it would be more appropriate to make a parental responsibility order. This would help situations where the surrogate wants to be involved in the child's life and this has the approval of the intended parent (s).

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Yes

Please provide your views below:

I agree that rule 16.35 (5) of the Family Procedure Rule 2010 should be reversed so that a parental order report can be released to the parties by default unless the court otherwise directs. The report should continue to be a report for the court and the parental order reporter's responsibilities and duties should remain to the court. Rule 16.35 (5) should continue to provide for confidentiality of the report but not between the parties themselves. The parties should not however, release the report to anyone who is not connected with the proceedings.

13 Consultation Question 6:

Please provide your views below:

No response - I am not an expert in Scottish family law.

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

Yes

Please provide your views below:

I agree that as long as the criteria described in chapter 8 of the report are met, that for DSAs the intended parent (s) should be the legal parent (s) of the child, subject to the surrogate's right to object.

However, I also believe this reversal of the mater semper certa est principle should extend to intended parents in international surrogacy arrangements as well.

15 Consultation Question 8:

Yes

Please provide your views below:

I agree that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party.

100 years; or

Please provide your views below:

Such records should be maintained for a minimum period of the lifetime of the child and so a period of 100 years would be a sensible period to adopt as a precautionary measure.

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Yes

Please provide your views below:

I agree that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements that involve a regulated surrogacy organisation. This is because it is important for the child to retain a right to know their origins in time and I fully support the Law Commission's proposals for a register containing information that will allow the child when reaching 18 to trace their origins.

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

The use of anonymously donated sperm in a traditional domestic surrogacy arrangement should prevent the arrangement from entering the new automatic parentage pathway. This is because the Law Commission's proposals for a register containing information that will allow the child when reaching 18 to trace their origins is a much needed reform of the law that should proceed. Anonymity would be in breach of a child's right to know their origins and therefore should be discouraged.

18 Consultation Question 11:

No

Please provide your views below:

NB it would be helpful to consultees if the exact period that the Law Commission has in mind could be specified in the question itself – for example, is reference to 'one week' 7 days or 5 working days?

It is agreed that the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents for a fixed period after the birth of the child.

It is agreed that this right should be by written indication by the surrogate within a defined period.

It is not agreed however that the defined period should be the same period as currently for birth registration less one week. If the suggested period for England and Wales is to be 42 days minus 7 days (35 days) and for Scotland 21 days minus 7 (14 days) then this period is far too short to allow the surrogate to fully reflect on the practical, emotional and legal implications of relinquishing the child. This is especially important because the Law Commission proposes that the parental order framework for international surrogacy should remain in place and this provides that the consent of the surrogate will be invalid if given less than six weeks after the birth (see e.g. S.54 (7) Human Fertilisation and Embryology Act 2008). In the absence of any evidence to suggest that the current period for consent to a parental order (6 weeks) is excessive then the current period of 6 weeks should be used. To

use different time periods could possibly lead to unequal treatment for surrogates in DSAs compared to ISAs.

19 Consultation Question 12:

Yes

Please provide your views below:

I agree that if the surrogate objects to the intended parent(s) acquiring legal parenthood within the period fixed after birth that the DSA can no longer proceed in the new pathway and the surrogate will remain the legal parent and the intended parents must proceed to make an application for a parental order.

20 Consultation Question 13:

No

Please provide your views below:

I do not agree that birth registration should proceed purely on the basis of a declaration from the intended parents that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object. A declaration alone will not protect against a surrogate who may for good reason have been unable to make an objection during the requisite period. There is clearly a conflict of interest in relying on this declaration coming from the intended parents alone. Such a declaration (if needed) should come from the surrogacy agency or licensed clinics who should be under a duty to protect the rights of the surrogate during the surrogacy arrangement. Capacity should have been assessed and confirmed and a declaration provided much earlier than birth registration.

21 Consultation Question 14:

No

Please provide your views below:

I do not agree that there should no longer be a requirement for a welfare assessment of the child either before or after his/her birth. This is because the Law Commission also proposes that double-donation should come within the automatic legal parentage pathway. This is despite the reservations expressed to the Law Commission by Cafcass and others that this could be exploited for child trafficking purposes. It is important that welfare assessment of the child remains for all surrogacy arrangements even those on the automatic pathway. Relying on clinics and surrogacy agencies to police the system will not be adequate protection against child exploitation or abuse. Child welfare assessments remain for adoption and should remain for surrogacy because it the practice of surrogacy involves multiple parties where there may be opportunities for exploitation.

22 Consultation Question 15:

Other

Please provide your views below:

This question presents a number of difficulties for the following reasons:

1. It presupposes that the mater semper certa est rule is not in operation whereby the intended mother would be the legal parent and the intended father who has provided his sperm would be the legal parent. The law would need to recognise a third parent (namely the surrogates spouse or civil partner) for this question to be relevant. The current law only recognises two legal parents.
2. If the mater semper certa est rule is in fact in place then the surrogate's spouse or civil partner would be the legal parent (regardless of whether or not the surrogate has exercised her right to object to the intended parents acquisition of legal parenthood) until such time as legal parenthood is reversed either by the use of the automatic pathway or by a parental order.

If the surrogate has objected to the intended parents acquisition of parenthood at birth then either a) birth registration will need to proceed with the surrogate and her husband as the named parents or b) if the reversal of the mater semper certa est principle is in place birth registration will proceed in the name of the intended parents. The case will then have to be removed from the automatic legal parentage pathway however and an application made for a parental order. If the court agrees legal parentage should revert to the surrogate this will then require a change to birth registration.

As such, if a surrogate exercises her right to object then whether or not her spouse or civil partner is the legal parent will depend on the state of the law in relation to the mater semper certa est principle.

In my view, any objection to legal parentage should be resolved through the parental order proceedings and not through the proposed new pathway.

Other

Please share your views below:

If a surrogate exercises her right to object then whether or not her spouse or civil partner is the legal parent will depend on the state of the law in relation to the mater semper certa est principle.

In my view, any objection to legal parentage should be resolved through the parental order proceedings and not through the proposed new pathway.

23 Consultation Question 16:

Not Answered

Please provide your views below:

I agree that if proposals for the new pathway go ahead that legal parentage should remain with the intended parents even for stillborn children unless the surrogate exercises her right to object.

No

Please provide your views below:

I do not agree. This question poses a difficulty because it is inviting consultees to respond on the assumption that a parental order will be granted. If a child is stillborn before a parental order is granted and the intended parents give a declaration that the relevant criteria for making a parental order has been met, this would usurp the function and jurisdiction of the court if birth registration went ahead on the basis of this declaration (regardless of whether or not the surrogate consents).

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

No

Please provide your views below:

I do not agree. This question poses a difficulty because it is inviting consultees to respond on the assumption that a parental order will be granted. If a child dies before a parental order is granted and the intended parents give a declaration that the relevant criteria for making a parental order has been met, this would usurp the function and jurisdiction of the court if birth registration went ahead on the basis of this declaration (regardless of whether or not the surrogate consents).

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

I agree that where the surrogate dies in childbirth or before the end of the period during which she could exercise her right to object, that the matter should be removed from the new pathway and a parental order should be applied for so that the court can assess the welfare considerations.

26 Consultation Question 19:

Not Answered

Please provide your views below:

I do not agree. Where both intended parents in a surrogacy arrangement within the new pathway die, then the welfare of the child should be determined by the court. Therefore the matter should exist the pathway. However, there is no reason why birth registration in the intended parents name cannot take place but this may still require some kind of declaration from the court for the purposes of establishing for example, paternity.

Please provide your views below:

I agree that in the case of surrogacy arrangements outside the new pathway that where the intended parents die before birth of the child or before a parental order is made that there should be provision for a third party to a) apply for an order under s.8 of the Children Act 1989 and b) apply for a parental order in the name of the intended parents. Whether the surrogate should be registered as the child's mother will depend on whether or not the mater semper certa est principle remains in law under s.33 of the Human Fertilisation and Embryology Act 2008. If the surrogate remains the legal mother in law then birth registration should proceed in her name and that of her spouse/civil partner. If the intended parents are to be the legal parents in law from birth then the intended parents should continue to be registered on the birth certificate until such time as this is confirmed or reversed by a parental order.

27 Consultation Question 20:

Not Answered

Please provide your views below:

I agree with this proposal. It is important that the parental order route for single applicants is not used by one part of a couple to block the other couple who has refused to agree to building a family using this route. It is not fair that a person should then discover, too late, that a parental order has been granted to their partner following a surrogacy arrangement that they were not aware of. They may then have legal obligations to a child that they did not want.

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

I do not support a three-parent model for the purposes of birth registration but I do support a three-parent model for the purposes of a parental order agreement. The question of whether a child should have more than two legal parents should be a matter to be determined by the courts given that there are legal implications to acquiring parentage that include inheritance and financial responsibilities.

I believe that for surrogacy arrangements the intended parents should automatically be recognised as the legal parents at birth for DSAs. Until such time as an international convention or bi-lateral agreements are achieved for ISAs the surrogate should continue to be the legal mother as it is important that there is judicial scrutiny of the ISA at the point that the intended parents return to the UK and this is best achieved through a parental order.

A three parent model under the new pathway would require the intended parents and surrogate to be recognised as the legal parents on birth and to register as the parents on the birth certificate. If however, the surrogate mother did not want to be legally and financially responsible for the child in the future she would then need to apply for birth registration to be changed and this presents a complicated administrative process. It may not be in the child's best interests to have a surrogate who is not involved in their daily life registered as their legal parent.

A three-parent model should not be a default position but should be a possible option open to a court that has carried out a welfare assessment.

29 Consultation Question 22:

Please provide your views below:

There should be additional oversight for the new pathway and this oversight should be judicial rather than administrative. This is because administrative oversight can lead to errors and failure to comply with procedural requirements - see cases such as *Re Human Fertilisation and Embryology Act 2008* (Cases AD, AE, AF, AG and AH) [2017] EWHC 1026 (fam) and *In the Matter of the Human Fertilisation Act 2008* (Cases AD, AE, AF, AG and AH (No.2) [2017] EWHC 1782 (fam).

Disputes can also arise between intended parents and these are best settled through the court process – see for example, *H v S* (surrogacy agreement) [2015] EWFC 36, *JP and LP and SP and CP* [2014] EWHC 595 (fam), *Mr G v Mrs G* [2012] EWHC 1979 (fam) and *Re N (a child)* [2008] 1 FLR 177. Research suggests that clinicians are not best placed to decide issues of the welfare of the child as there are different interpretations applied and inconsistent approaches result – see *EJ Lee, S Sheldon and J Macvarish, 'After the 'Need for...a Father': the Welfare of the Child' and 'Supportive Parenting' in Assisted Conception Clinics in the UK' (2015) 6 (1) Families and Relationships and Societies 71.*

The judiciary are best place to decide issues such as whether the surrogate's consent has been freely given or where issues arise as to the question of abortion and the surrogate's bodily autonomy to decide such matters. The Law Commission is not proposing that surrogacy contracts are given legal force and therefore judicial intervention rather than administrative intervention is required to determine evidence about intention of the parties.

30 Consultation Question 23:

Please provide your views below:

The welfare checklist in section 1 (3) of the Children Act 1989 should be amended to provide additional factors specific to surrogacy arrangements such as:

1. An additional factor for the court to consider should relate to the importance of the child-parent relationship and family formation in the case of surrogacy arrangements.
2. There should be an amendment to s.1 (3) (f) to make some reference to not just parents being capable of meeting the child's needs but also taking responsibility for the child's wellbeing.
3. Similarly s.1 (6) (a) should be amended to reflect the fact that the definition of a parent is not just one who does not put a child at risk of harm but also one capable of taking responsibility for the child's wellbeing.
4. Amendment to section 1 (4)(f) so that the sentence 'or of any such person regarding the child' includes the intended parents in a surrogacy arrangement – for arguments relating to this amendment see *R D'Alton-Harrison, 'Mater Semper Incertus Est: Who's Your Mummy?' (2014) ' 22 (3) Medical Law Review, 357, 378.* This would also accord with Article 3 of the United Nations Convention on the Rights of the Child 1989.

31 Consultation Question 24:

Please provide your views below:

The welfare checklist in section 1 (4) of the ACA 2002 (as amended by regulation 2 and paragraph 1 of schedule 1 of the Human Fertilisation and Embryology (Parental Orders) Regulations 2018 should be amended to include:

1. S.1 (4) (b) should be amended to bring it in line with s.1 (3) of the Children Act 1989 and read 'the child's physical, emotional and educational needs'.
2. S.1 (4) (c) should be amended so that it relates not just to 'subject of a parental order' but also includes specific reference to the child's origins with regard to a surrogacy arrangement.
3. Amendment to section 1 (8)(b) so that the sentence 'or of any such person regarding the child' includes the intended parents in a surrogacy arrangement – for arguments relating to this amendment see *R D'Alton-Harrison, 'Mater Semper Incertus Est: Who's Your Mummy?' (2014) ' 22 (3) Medical Law Review, 357, 378.* This would also accord with Article 3 of the United Nations Convention on the Rights of the Child 1989.

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

I agree that s.10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for an order under s.8 of the 1989 Act without leave of the court. This is because, if the court decides to grant a parental order in the surrogate's favour, the intended parents should be able to apply for a parental responsibility or other order and the court hearing a parental order application should be able to consider such applications.

33 Consultation Question 26:

No

Please provide your views below:

I do not agree that where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire automatic parental responsibility in certain circumstances. The Law Commission will need to look very carefully at whether this could in fact work for both DSAs and ISAs. There is the added difficulty with ISAs that the intended parents may already have been granted other orders such as an adoption order in another jurisdiction. In the case of double-donations an automatic bestowal of parental responsibility may be problematic if there is the potential for this route to be used to traffic children and automatic grant of parental responsibility may fuel this problem.

Parental responsibility is an order to be bestowed by the court after the s.1(3) checklist has been considered and therefore I do not consider that automatic acquisition should be given in this way.

34 Consultation Question 27:

Yes

Please provide your views below:

I agree that if the automatic pathway is considered to be the best means of reform that it should carry with it the right to automatic acquisition of parental responsibility by the intended parents on the birth of the child even if the surrogate exercises her right to object, as long as the child is living with the intended parents.

However, I do not agree that automatic parental responsibility should be granted in the case of double donations. This is because such acquisition may be problematic if there is the potential for this route to be used to traffic children and automatic grant of parental responsibility may fuel this problem.

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

No

Please provide your views below:

I do not consider that it is necessary for the surrogate to retain parental responsibility under the new pathway until the expiry of the period for her right to object if the Law Commission reform on reversal of the mater semper certa est principle is accepted. This is because the intended parents will then be considered the legal parents from birth. If however, there is not to be a reversal of the mater semper certa est principle then it is important that as the legal mother the surrogate continues to retain parental responsibility for the child until such time as the period of time for her to exercise her right of objection expires. After this period automatic parental responsibility can be conferred upon the intended parents.

36 Consultation Question 29:

Please provide your views below:

If it is considered in the best interests of the child for automatic parental responsibility to be conferred on a party to a surrogacy arrangement then there should be no restriction on the parental responsibility granted but the opposing party who does not have parental responsibility should be able to make either a prohibited steps or a specific issue application for an order under s.8 Children Act 1989 if an issue arises about the way a party intends to exercise their parental responsibility. This should be capable of being heard before or during a parental order application.

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

No

Please provide your views below:

I do not agree that traditional surrogacy arrangements should fall within the scope of the new pathway. This should be reserved for gestational surrogacy arrangements only where the surrogate does not have a genetic connection to the child. Gestational surrogacy arrangements are less likely to raise issues about the surrogate's consent and whether it is right to limit her bodily autonomy or rights to the child by imposing a period of time for her to exercise an objection. Gestational surrogacy arrangements also present less of a problem in terms of a reversal of the mater semper certa est principle.

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

No response – I am not an independent surrogate or intended parent.

39 Consultation Question 32:

Please provide your views below:

Independent surrogacy arrangements should not be brought within the scope of the new pathway unless the assessment of the child's welfare is to be given to another organisation rather than left to licensed clinics. This is because independent surrogacy arrangements will not involve licensed clinics and therefore there should be some mechanism to ensure a) that the surrogate has not raised an objection within the required period (other than simply a declaration from the intended parents) and b) to ensure that the child's wellbeing has been independently considered and c) to ensure there has not been a hidden commercial surrogacy arrangement.

Please provide your views below:

See comments above

40 Consultation Question 33:

Yes

Please provide your views below:

No objection to this proposal

No

Please provide your views below:

I do not agree that there should be no requirement for a regulated surrogacy organisation to take a particular form. Surrogacy organisations should demonstrate as a minimum that they have suitable premises and this should include rooms where counselling takes place if counselling is to be part of the Law Commission recommendations. Suitable premises are a specific requirement for licensed clinics under the HFEA Code and should be the same for surrogacy organisations. Surrogacy organisations should also be run by suitably qualified persons (see response to consultation question 34).

Yes

Please provide your views below:

I agree that each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation. This should be a similar role to that of the nominated 'person responsible' under section 17 of the Human Fertilisation and Embryology Act 1990 and the 2008 Act.

41 Consultation Question 34:

representing the organisation to, and liaising with, the regulator;; managing the regulated surrogacy organisation with sufficient care, competence and skill;; ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;; training any staff, including that of the person responsible; and, providing data to the regulator and to such other person as required by law.

Please provide your views below:

The above requirements are a starting point. I would add the additional responsibilities below.

Please provide your views below:

I would include the additional responsibilities:

1. Ensuring the surrogate has not or has no intention of making an objection to parentage within the required period.
2. Ensuring that there is no evidence of commercial surrogacy in terms of expenses paid to the surrogate.
3. Ensuring that counselling provisions have been made available to the parties before the surrogacy arrangement is formalised.

Please provide your views below:

I believe a person responsible for a surrogacy organisation must demonstrate one of the following:

- a) Previous experience of running a surrogacy organisation or
- b) Previous experience of acting as a surrogate (successfully and without any legal complications)
- c) Legal qualifications as a qualified lawyer (e.g. solicitor, barrister CILEX Fellow)
- d) Clinical experience e.g. previously running a licensed clinic or a clinician or therapist/counsellor.

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Yes

Please provide your views below:

I agree that regulated surrogacy organisations should be non-profit making bodies. As long as the law in England and Wales and Scotland prohibits commercial surrogacy then third parties should not be allowed to profit whilst the surrogate is unable to make a profit. This would enable exploitation within the market.

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

The definition of matching or facilitation service should include any activities designed to bring about s.1 (3), (5) and (6) and s.2 of the Surrogacy Arrangements Act 1985.

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Yes

Please provide your views below:

I agree that only surrogacy organisations should be able to offer matching and facilitation services in the new pathway. To allow other organisations to offer the service would make it very difficult for any regulator to police non-compliance and this would increase the risk of potential harm in a process that is to be administrative rather than judicial.

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

In the case of arrangements outside the new pathway, these will include ISAs and it will be difficult to stipulate what organisations intended parents and surrogates should use as the formation of organisations may be different in a number of different jurisdictions. For example, hospitals or clinics that are not primarily surrogacy organisations may be involved in the arrangements. In addition, as ISAs are to retain judicial scrutiny through the parental order process, this will enable the courts to also scrutinise the non-surrogacy organisations.

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

The same sanction for performing licensed services when licensed should apply to surrogacy organisations as currently apply to licensed clinics under the HFEA 2008. Those sanctions are criminal in nature under s.41 HFEA 1990 with a maximum penalty of 10 years and/or fine.

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Yes

Please provide your views below:

I agree that the current regulator the HFEA should expand their remit to include regulation of surrogacy organisations in the same way that it currently regulates clinics as well as oversight of the new legal parenthood pathway (although I do have reservations about whether a pathway that is non-judicial can adequately protect the parties to a surrogacy arrangement).

Please provide your views below:

This question is difficult to consider without receiving more detailed information about the proposed pathway and the question may be premature. It would be more appropriate for the HFEA to launch a separate consultation process about what its Code of Practice should contain once the Law Commission's final recommendations are known both about the new pathway and whether it is appropriate for the HFEA to act as the regulator.

However, if licensed clinics are permitted to find surrogates then the HFEA Code of Practice will need to provide clear guidelines on the parameters of becoming involved in the surrogacy arrangement. The HFEA Code of Practice should provide guidelines on how clinics are to assess the welfare considerations of the child in the absence of the involvement of a parental order reporter in the new pathway. It is important that the HFEA also stipulates what type of contractual clauses would be considered inappropriate (e.g. those that might lead to undue pressure being placed on a surrogate). This will help lawyers and surrogacy agencies when giving advice. The Code of Practice will also need to include provisions on documenting a surrogate's objection/consent and the process involved (and whether this is to be done by a clinic or surrogacy agency or both).

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Yes

Please provide your views below:

I agree that for surrogacy agreements outside the new pathway that surrogacy agreements should remain unenforceable. This is because the court will retain the power to consider the best interests of the child during the parental order application process and those judicial powers should not be fettered by the enforceability of such contracts. They should remain as evidence only.

In the case of the new pathway to parenthood (which I do not agree should be brought into force) there is an argument for such contracts becoming enforceable if there is to be a change in the law to make intended parents the legal parents from birth. Whilst enforceability can still be challenged in the courts if the surrogate exercises her right to object to legal parentage the normal rules of contract will apply and so breach/rescission will need to be established to succeed.

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

I do not agree that there should not be a ceiling on fees for negotiating, facilitating and advising on surrogacy arrangements. A maximum fee would prevent organisations entering the market with the sole purpose of profiting from surrogacy arrangements. Matching could also be disguised as 'facilitation' in order to attract a fee and therefore in the absence of a fixed definition with a list of prescribed activities for these terms, organisations may seek to include activities that might not genuinely fall into these categories and then seek to charge fees at exorbitant rates.

Instead surrogacy organisations should be limited to a maximum fee. However, for lawyers who are providing genuine legal advice on surrogacy contracts they should be allowed to charge their normal fees based on an hourly rate, however, this should only be for advice on the contract itself. Any other activities that would amount to negotiating or facilitating the arrangement beyond scrutiny of the contract should attract the same maximum fee applicable to surrogacy organisations.

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

I do not agree that the current prohibition on advertising surrogacy services under s.3 Surrogacy Arrangements Act 1985 should be lifted. This acts to prevent exploitation and harm in the market especially as we see the growth of the use of social media to find surrogates who may in fact be vulnerable.

I would favour a system that allows surrogates to approach licensed clinics and surrogacy agencies to advertise their services on their behalf once the appropriate screening has taken place. Individuals should not be permitted to freely advertise their services as surrogates, particularly whilst the UK maintains a prohibition on commercial surrogacy. The new pathway to legal parenthood would be more difficult to police in terms of commercial surrogacy if the current prohibition on advertising were lifted.

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

I agree that where a parental order has been made in respect of a child born via a surrogacy arrangement that has also been recorded in the Parental Order Register that the child should be able to access their original birth certificate when they reach the age of 18. This is in line with adoption regulation and children born from a surrogacy arrangement should have the same rights to know their origins as adopted children.

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Yes

Please provide your views below:

I agree that where the birth certificate records the birth parents as the intended parents that the full form of the certificate should record that the birth was a result of a surrogacy arrangement.

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

In view of the recent decision in the case of *TT v The Registrar General for England and Wales and the Secretary of State for Health and Social care and Others* [2019] EWHC 2384 (Fam) it is clear that the birth registration system in England and Wales requires reform as despite the provisions for equal treatment under the it does not provide an opportunity for transgender parents to recognise that their new parenting role will require them to adopt non-gendered roles as 'mother' or 'father'. One way to resolve this is to permit registration using the term 'gestational mother' and 'genetic mother'. This will assist both the transgender community and intended mothers in a surrogacy arrangement.

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

I agree that for England and Wales there should be a provision that from the age of 18 a child who has been subject to a parental order should be able to access all the documents contained in the court file relating to those parental order proceedings.

55 Consultation Question 47:

Other

Please provide your views below:

I do not agree that a national register of surrogacy arrangements should be created to record the identity of the parties to a surrogacy arrangement if it is intended that such record should be made available to the public. This is because this would be an unwelcome invasion of private family life. Currently, parental orders are held in private and the identity of the child protected. A national register that identifies the intended parents would also run the risk of indirectly identifying the child. Some surrogates may not wish their family and friends to know that they have acted as a surrogate and some intended parents may not wish it to be known that the child was not genetically related to both parents.

However, I do agree that there should be some record kept nationally of surrogacy arrangements especially those going through the proposed new pathway. However, these records should only be made available to the parties and the child (when the child has reached 18).

Yes

Please provide your views below:

I agree that if there is a national record that is not available to the public that it should include all the information identified in 19.57 of consultation question 47.

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

I agree that non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and be made available for disclosure to a child born of a surrogacy arrangement. This would for example help trans intended parents to record any intention to parent as 'mother' or 'father' and go some way to meeting the social policy issues discussed at some length in the judgment of *TT v The Registrar General for England and Wales and the Secretary of State for Health and Social care and Others* [2019] EWHC 2384 (Fam).

This should be in addition to identifying information of the type suggested in consultation question 47.

57 Consultation Question 49:

Yes

Please provide your views below:

I agree that the age at which a child should be able to access information about a surrogacy arrangement that is recorded in the register should be 18 for identifying information and 16 for non-identifying information with the proviso that they have been given a suitable opportunity to receive counselling.

Please provide your views below:

The child should be able to access such information in the following circumstances:

1. Where his or her legal parents have consented or
2. If he or she has received counselling and the counsellor judge that he/she is sufficiently mature to receive this information or
3. Where a court directs that a child should receive this information rather than 'in any other circumstances' as this is too wide.

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

There should indeed be provision for those born of a traditional surrogacy arrangement to request information that might disclose whether a person they are intending to marry or enter into a civil partnership or intimate physical relationship was carried by the same surrogate. This should be the case whether or not the partner involved is also a child born through a surrogacy arrangement as they may be the surrogate's own natural children or a near relative. However, this provision would not protect marriages/civil partnerships/relationships between partners who shared the same egg or sperm donor in a gestational surrogacy arrangement. Due to the fact that there remains provision for the anonymity of donors in a number of jurisdictions, this reform could only ever be a partial preventative measure for inter-blood relationships.

59 Consultation Question 51:

Yes

Please provide your views below:

I agree that the register should record information that would allow two people who are genetically related through the same surrogate to identify each other if they wish to do so.

Please provide your views below:

I do not agree that this should be extended to those who are not genetically related but share the same surrogate. Surrogate arrangements are still private and whilst a child may wish to know their origins through a register they may not wish others to know their origin simply because they share the same surrogate.

60 Consultation Question 52:

Please provide your views below:

I agree that provision should be made in the register to enable a person carried by a surrogate and the surrogate's own child to access information to identify each other but only if they are genetically related to each other through the surrogate but not otherwise. Surrogate arrangements are still private and whilst a child may wish to know their origins through a register they may not wish others to know their origin simply because they share the same surrogate.

Please provide your views below:

No

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

If the purpose of the register is to enable a child to know their origins then in the case of arrangements outside the new pathway details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

I agree that the six-month time limit for making a parental order in sections 54 and 54A of the HFEA 2008 should be abolished and replaced with 'within a reasonable time period'. The reasonable time period should be for the courts to ascertain.

63 Consultation Question 55:

Yes

Please provide your views below:

I agree that:

1. The current circumstances in which the consent of the surrogate is not required as prescribed by the Family Procedure Rules should continue

Yes

Please provide your views below:

I agree that:

2. the court should have power to dispense with consent of the surrogate where a) the child is living with the intended parents with the consent of the surrogate and any other legal parent or b) following a determination by the court that the child should live with the intended parents.

3. the court's power to dispense with consent should be subject to the paramount consideration of the welfare of the child as set out in s.1 of the Adoption and Children Act 2002 as amended by Human Fertilisation and Embryology (Parental Order) Regulations 2018 and in line with section 14 (3) of the Adoption and Children (Scotland) Act 2007 as amended.

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

Other

Please provide your views below:

I do not agree that under the new pathway the criteria should be changed from one of domicile to both domicile and habitual residence. This is because introducing a criteria of habitual residence into a pathway that does not have judicial oversight would run the risk of allowing fertility tourism into the UK. This is because a person could establish habitual residence by moving to the UK in a temporary job or purchasing a house in the UK, which they only reside on a temporary basis.

However, if it is proposed that the new pathway should have judicial oversight then I would support the introduction of a habitual residence test that can be determined by the court.

I therefore support the introduction of a habitual residence test for a parental order only as this route will retain judicial scrutiny. I would welcome a qualifying period of habitual residence as a requirement in this situation.

Please provide your views below:

I would welcome a qualifying period of habitual residence as a requirement only if the new pathway is to have judicial scrutiny situation. It should, however, apply to the parental order process which is to retain judicial scrutiny.

65 Consultation Question 57:

Please provide your views below:

The qualifying categories of relationship in section 54 (2) of the HFEA 2008 are appropriate since the Human Fertilisation and Embryology Act 2008 (Remedial) Order 2018 amendment that permits single people to apply. However, s.54 (2) would benefit from a definition of introduction of 'enduring family relationship'.

I do not believe the current requirement should be removed.

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Yes

Please provide views below:

I agree that to use the new pathway the intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

67 Consultation Question 59:

No

Please provide views below:

I do not agree that double donation should be permitted under the new pathway even if it is limited to medical necessity. The proposed new pathway is an accelerated process that may not have judicial scrutiny and therefore the risk of exploitation through child trafficking is greater. The Law Commission consultation paper does not adequately respond to Cafcass concerns about potential child trafficking.

Please provide views below:

I do not agree that double donation should be permitted under the parental order process because the parental order process (which is a creature of the HFEA 1990 and 2008) is intended for reproduction that involves a genetic connection through gametes. Double donation should be recognised but through a separate mechanism such as 'kinship order' or through an amendment to the adoption legislation.

Yes

Please provide views below:

I agree that it is absolutely right that international surrogacy arrangements should always retain a requirement that the intended parents contribute gametes to the conception of the child.

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

No

Please provide your views below:

I disagree that the genetic link requirement should not apply under the new pathway regardless of whether it is transferred to the parental order process and the intended parents made the application in good faith. This is because I disagree that double donations should be included in the new pathway. A genetic link requirement should be retained in the new pathway. This is because it is an accelerated process that may not have judicial scrutiny and therefore the risk of exploitation through child trafficking is greater.

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

Yes

Please provide views below:

Notwithstanding my objection to double donation proceeding under either the new pathway or the parental order process, I do agree that an exception should be made for made in the case of intended parents where one of the party provides gametes but then the relationship breaks down. In that situation, the party who has not provided gametes should be able to proceed to make a parental order application even though they will not be genetically linked to the child. However, this will depend very much on the court considering issues of consent and the child's welfare.

70 Consultation Question 62:

Please provide your views below:

I agree that there should be a requirement that the surrogacy arrangement has been used for medical necessity. Evidence suggests that for intended parents, because of the cost and a preference for a 'full genetic connection', it is often a treatment of last resort. A medical necessity requirement would reflect this and remove some of the concerns of exploitation through commercialisation of the womb. It would become akin to organ donation in terms of medical justification for inflicting surgical 'injury' to a surrogate for the benefit of others.

The requirement for medical necessity should apply to surrogacy arrangements under the new pathway and post-birth parental orders.

Please provide your views below:

The definition of 'medical necessity' for the purposes of double donation surrogacy should be health-related rather than socially related. By this, I mean that both of the applicants for treatment must not be able to use their own gametes due to infertility. In addition, it must be shown that they would not respond medically to all the other available fertility treatments or such treatments could impose health risks which it would be unreasonable to expect the applicants to subject themselves to.

71 Consultation Question 63:

Yes

Please provide your views below:

I agree that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to the registration of the child's birth.

Please provide your views below:

It should be a condition for a parental order application that those who contributed gametes should be entered on the register but only if they have not donated anonymously. This is because for international surrogacy arrangements the surrogacy arrangement may have taken place in a jurisdiction where egg or sperm donation takes place anonymously. The regulator or courts would not have jurisdiction to force disclosure in those circumstances. However, if it is proposed that international surrogacy should be restricted to approved jurisdictions as prescribed, for example, by the Secretary of State, then it would be possible to ensure that only those jurisdictions where gamete donation is not anonymous are considered to be approved jurisdictions. This would then make it possible to include a requirement that all donors are identified in the national register. An alternative is that only non-identifying information of gamete donors is included in the register but not identifying information. Overseas clinics routinely pass on non-identifying information to intended parents and so this requirement should still be possible for both domestic and international surrogacy arrangements.

Yes

Please provide your views below:

I agree that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

72 Consultation Question 64:

Yes

Please provide your views below:

I agree that there should not be a maximum age limit for the grant of a parental order but instead maximum ages should be confined to accessing fertility treatment. The court should however take this into account in the assessment of the welfare of the child. There should also be an amendment to the welfare checklist under s.1(4) Adoption and Children Act 2002 to take into account the age of the intended parents and whether this impacts on their ability and suitability to provide long-term care for the child, if it is proposed that the court is left to decide this issue.

Please provide your views below:

There be a prescribed age for intended parents that would prevent them using the new pathway and require them instead to use the parental order process so that the court can determine the question of age. That age should reflect the fact that in our modern society, people are becoming first time parents at a much older age due to work commitments and career decisions or only finding the right partner later in life. Also with improved pregnancy care and people living longer, the prescribed age should be 50 so that only intended parents under the age of 50 can use the new pathway. I would suggest this age to reflect the fact that intended parents would then be no older than 67 by the time the child reaches 18 when the intended parents would be nearing retirement age (see the Pensions Act 2007 and 2014). I would choose the longer term retirement age of 67 rather than 66 to make the reforms 'future-proof'. As long as one of the intended parents is under 50 then they should be permitted to continue to use the new pathway.

Yes

Please provide your views below:

I agree

73 Consultation Question 65:

Yes

Please provide your views below:

I agree that surrogates should be at least the age of 18 in order for the court to make a parental order.

Yes

Please provide your views below:

I agree that surrogates should be at least the age of 18 at the time of entering the new pathway.

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Yes

Please provide your views below:

I agree that medical testing of the surrogate, any partner and any intended parent should be required for the new pathway.

Please provide your views below:

The 9th edition of the HFEA Code of Practice does not appear to contain a detailed description of the testing required. I do not consider that testing would be sufficient unless it takes place in a licensed clinic. Therefore traditional surrogacy arrangements that do not take place in a licensed clinic (and would therefore proceed through the parental order process) should not have any particular requirements for testing imposed as these would be hard to enforce or police. However, any government guidelines on surrogacy (including guidelines from the regulator) should advise that some form of testing in the form of screening for sexually transmitted infections should take place.

75 Consultation Question 67:

Yes

Please provide your views below:

I agree that the surrogate, her spouse, civil partner or partner and the intended parents should be required to attend counselling with regard to the implications of entering into the surrogacy arrangement.

I agree that the implications of counselling should be provided by a counsellor who meets the requirements under the Code of Practice paragraphs 2.14 to 2.15.

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Yes

Please provide your views below:

I agree that there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and entering into the agreement before the agreement is signed.

77 Consultation Question 69:

Yes

Please provide your views below:

I agree that as an eligibility requirement for the new pathway an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners.

Where a person screened is found to have a criminal record (including cautions) the application should not proceed under the new pathway.

Please provide your views below:

It is suitable for the list of convictions to include those convictions that apply in the case of adoption under the Adoption Agencies Regulations 2005 schedule 3. The list of convictions should be broadened to include rape offences against children under sections 5-29 and sections 47 - 51 of the Sexual offences Act 2003.

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

I believe it is important that one of the eligibility requirements of the new pathway should be that the surrogate has previously given birth. A surrogate can only fully appreciate the risks of pregnancy if they have given birth before and have gained an understanding of the medical process involved in a pregnancy. It is also an important sign for the intended parents of the surrogate's potential fertility. The surrogate will also have an appreciation that a pregnancy bond can be formed between her and the child and that detachment from the resultant child may not be easy.

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

Yes

Please provide your views below:

I agree that there should not be a maximum number of pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

based on costs actually incurred by the surrogate, and only on production of receipts.

Please provide your views below:

Payment of costs by the intended parents to the surrogate should be based on costs actually incurred by the surrogate, and only on production of receipts.

81 Consultation Question 73:

Please provide your views below:

Intended parents should be able to pay the surrogate essential costs relating to the surrogacy.

The types of expenditure that should be considered as essential are those set out in the Department of Health Guidelines 'The Surrogacy Pathway: Surrogacy and the Legal Process for Intended Parents and Surrogates in England and Wales'(Assets Publishing 2018) page 10 under 'reasonable expenses'. Save that 'other incidental expenses that relate to treatment and pregnancy' should include a list of examples such as 'ovulation and pregnancy tests, Insemination and IVF costs and medical costs – see the Brazier Report, 'Surrogacy: Review for Health Ministers of Current Arrangements for Payments and Regulation para 5.26.

82 Consultation Question 74:

Please provide your views below:

The intended parents should be able to pay the surrogate additional costs relating to the pregnancy.

The types of expenditure that should be considered as additional rather than essential are those set out in together with expenses identified in the Brazier Report, 'Surrogacy: Review for Health Ministers of Current Arrangements for Payments and Regulation para 5.26 but restricted to 1) counselling fees, 2) legal fees, 3) life and disability insurance 4) Telephone and postal expenses (including call cards).

83 Consultation Question 75:

Please provide your views below:

I do not consider that intended parents should pay all costs arising from entering a surrogacy arrangement as there does need to be a cap on costs and expenses to avoid commercialisation of the practice. However, I do consider that in addition to the 'essential' expenses and 'additional expenses' identified in responses to consultation questions 73 and 74, that the surrogate should be permitted to receive compensation. This should be an amount prescribed by the Secretary of State and should be an amount in line with the donation of gametes (egg) which is currently £750. However, as a womb is donated, there would be a strong argument for increasing this figure to say, £1500.

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

I agree that the intended parents should be able to pay their surrogate her actual lost earnings (whether employed or self-employed) and that this should be regarded as part of the 'essential' payment referred to in consultation question 73.

85 Consultation Question 77:

Please provide your views below:

I agree that the intended parents should be able to pay their surrogate her lost employment-related potential earnings (as defined in para 15.35) and her other lost potential earnings (as defined in para 15.36).

86 Consultation Question 78:

Please provide your views below:

No response – I do not have any personal experience of impact of surrogacy on surrogate's benefits.

87 Consultation Question 79:

pain and inconvenience arising from the pregnancy and childbirth; medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or, specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

Please provide your views below:

I agree that intended parents should be able to pay the surrogate compensation for complications arising from birth in the circumstances identified in 1,2, and 3 of consultation question 79. This should however, only be paid in the event that one of these conditions arises. It should also be in addition to the compensation identified in my response to consultation question 75.

Please provide your views below:

It should also be in addition to the compensation identified in my response to consultation question 75. This should be an amount prescribed by the Secretary of State and should be an amount in line with the donation of gametes (egg) which is currently £750. However, as a womb is donated, there would be a strong argument for increasing this figure to say, £1500.

a fixed fee set by the regulator (operating as a cap on the maximum payable), or

Please provide your views below:

It is important that the regulator (or Secretary of State) sets the amounts or there is the potential for surrogates to be under-compensated and exploited.

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

On the principle that it is not possible in law to consent to death or personal injury in a contractual arrangement, the intended parents should compensate the surrogate's family in the event of the pregnancy resulting in the surrogate's death. This should, however, be limited to the current bereavement award as set out in the current edition of the Judicial College's Guidelines for the Assessment of General Damages in Personal Injury.

89 Consultation Question 81:

Please provide your views below:

Intended parents should be able to buy gifts for the surrogate but legislation should specify that the gift should be modest and reasonable in nature.

90 Consultation Question 82:

It should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

Please provide your views below:

I am in favour of intended parents paying the surrogate a fee for the service of undertaking a surrogacy.

a fixed fee set by the regulator.

Please provide your views below:

I am of the view that this payment should be a fixed sum set by the regulator. Any fixed amount should be an amount in line with the donation of gametes (egg), which is currently £750. However, as a womb is donated, there would be a strong argument for increasing this figure to say, £1500.

essential costs relating to the pregnancy;; additional costs relating to the pregnancy;; lost earnings;; compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or, gifts.

Please provide any views below:

The law should permit other costs and expenses in addition to a fixed fee for the service of undertaking surrogacy. This should be all costs identified in 1-6 of consultation question 82 para 19.109.

91 Consultation Question 83:

Please provide views below:

In the event of miscarriage or termination of the pregnancy, the fixed fee to the surrogate should remain the same but payment of essential, additional costs and loss of earnings should be reduced.

to any miscarriage or termination; or

Please provide your views below:

In the event of miscarriage or termination of the pregnancy, the reduction of payments to the surrogate should apply to any miscarriage or termination rather than a particular period.

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Yes

Please provide your views below:

I agree that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows the new pathway to parenthood or involves a post-birth application for a parental order.

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

Provision should be made in legislation for unidentified payments to be made in exceptional circumstances where a case can be established for need. Each pregnancy and surrogacy arrangement is different and it is not therefore possible to predict the circumstance

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

When considering whether intended parents should be permitted to make payments to surrogates and at what level, the Law Commission should be mindful of the extent that brokers/third parties to the surrogacy arrangement might have scope to financially benefit from the arrangement to the detriment of the surrogate. The surrogate is the one who takes the greatest risks and exposes herself to the possibility of harm/exploitation. It is important the surrogate should be properly financially compensated rather than third parties or brokers profiting from her womb.

95 Consultation Question 87:

Please provide your views below:

If prescribed payments are permitted in legislation then there should be corresponding enforcement powers. These should relate to a) prohibition on entering the new pathway or applying for a parental order 2) in the case of DBAs the surrogate remains the legal parent until such time as this is altered by court determination.

96 Consultation Question 88:

Yes

Please provide your views below:

I agree that the financial terms of a surrogacy arrangement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Yes

Please provide your views below:

I agree that the ability to enforce the financial terms of a surrogacy agreement should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle, save that any 'additional costs' that directly relate to provisions for healthy eating/diet' should not be enforceable if the surrogate has breached these terms e.g. smoking during pregnancy, refusing to adhere to a specific diet advised by the hospital etc.

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

No response – I am not an overseas surrogate or an advocate for overseas surrogates.

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:

No response – I am not an organisation focused on children's rights and welfare in the international context.

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

No response – I am an academic and do not have experience of registering a child born through a surrogacy arrangement as a British citizen.

100 Consultation Question 92: We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the

child.Do consultees agree?

Yes

Please provide your views below:

I agree that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an ISA and obtaining a British passport for them, to begin prior to the birth of the child.

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

No response – I am an academic and have not had experience of applying for a visa for a child born through an ISA.

102 Consultation Question 94:

Yes

Please provide your views below:

I agree that this would be a sensible adjustment to the current administrative process which will significantly reduce delays and minimise levels of anxiety for intended parents using ISAs.

Yes

Please provide your views below:

This would prevent inconsistencies arising in the exercise of discretion as is the current situation.

Yes

Please provide your views below:

Yes, as contact is an issue for the parties or the courts where disagreement arises and not for UKBA

Yes

Please provide your views below:

Yes, as contact is an issue for the parties or the courts where disagreement arises and not for UKBA

Please provide your views below:

The present condition that imposes a time limit connected to a conditional leave to enter should remain. This is to encourage those who might otherwise not apply for a parental order to do so. If a condition is tied to the grant of a British passport then intended couples using ISA are more likely to make the application. An application should always be made within a reasonable period of time. It is right to remove the six-month time limit for making a parental order because cases suggest it causes difficulties where intended parents were not aware of the legal requirements. However, if this is made clear at border controls and enforced then there should be less cases where a parental order application is made after years rather than weeks or months.

103 Consultation Question 95:We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.Do consultees agree?

Yes

Please provide your views below:

I agree that it should be possible to open a file and begin the process for applying for a EU Uniform Format Form in respect of a child born through an ISA, before the child is born and that the application will need to be completed after the birth of the child.

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

No response – I am an academic and have not had experience of applying for an EU Uniform Format Form.

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Yes

Please provide your views below:

I agree that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through ISA. However, it is important to note that the UK Border Agency already provides such advice but it does need to be more widely circulated and made available through other websites such as the Department for Health and Social Care and the HFEA.

106 Consultation Question 98: We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood. Do consultees agree?

Yes

Please provide your views below:

I agree that ISAs should not be eligible for the new pathway due to the complexity of private international law matters and the increased risk due to lack of UK regulation covering overseas licensed clinics, surrogacy agencies and other third party brokers.

107 Consultation Question 99:

Yes

Please provide your views below:

This is a very important amendment which would go some way to equalising the treatment of DSAs and ISAs in terms of alleviating the financial cost and stress to intended parents of the legal process surrounding surrogacy.

108 Consultation Question 100:

Please provide your views below:

No response – I am an academic and do not have personal experience of ISAs involving foreign intended parents.

Please provide your views below:

There should be a restriction on removal of a child from the jurisdiction of the UK by foreign intended parents and this restriction should be administrative (through the visa controls of UKBA and Embassies) rather than through the courts.

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

I do not consider the current application of the law on statutory paternity leave/paternity pay as regards the surrogate's spouse/civil partner/partner requires reform.

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Yes

Please provide your views below:

I agree that provision for maternity allowance should be made in respect of intended parents and limited to one intended parent.

111 Consultation Question 103:

Please provide your views below:

I think that the law currently strikes the right balance in terms of maternity leave and allowance as this should rightly be focused on the surrogate. I do not consider further reforms are required although there should be some guidance for employers on allowing intended parents to work flexi-time to enable them to attend ant-natal appointments with the surrogate or for induced lactation. As there is not currently a right to time off work for fertility treatment, I believe it would be stretching the limit of the law to give intended parents as a group, favourable treatment in employment law.

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

I do not consider that as currently drafted Regulation of the Workplace (Health, Safety and Welfare Regulations) 1992 are sufficiently worded to include intended parents and it would be helpful if reforms could clarify that intended parents (in the relevant circumstances) should be included.

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

No further suggestions

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

I am not an expert on succession law. However, it appears to me that at present either through a parental order or the new pathway, a child born through a surrogacy arrangement would be considered to be a child of the family for succession purposes.

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

More guidance about ISAs from the DHSC would be helpful in their surrogacy guide. It would help if the DHSC, the HFEA and the UKBA (and possibly the FCO) could all agree on one definitive guide surrounding ISAs.

Please provide your views below:

I will leave this comment for the NMC.

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

This is a very thorough review that has raised many questions and dealt with the majority of issues surrounding surrogacy both in respect of DBAs and ISAs. In view of consultation question 99 in respect of ISAs, I wonder if it is also worth the Law Commission considering the following:

1. Whether the Secretary of State should be given powers to designate certain overseas jurisdictions as 'safe' and UK law compliant/compatible that would merit certain ISA arrangements coming under the new pathway.
2. Whether the Foreign and Commonwealth Office should be given powers to pursue local agreements with certain jurisdictions to permit an accelerated immigration process for children born through ISAs in those jurisdictions.

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

N/A

Not Answered

If international, in which country did the arrangement take place?:

N/A

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

N/A

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

Please refer to publication R D'Alton-Harrison, 'Mater Semper Incertus Est: Who's Your Mummy?' (2014) 22 (3) Medical Law Review, 357 and R D'Alton-Harrison, 'Regulating International Surrogacy, 'The Elephant in the Room': Reflections from a UK Study', (2019) 31 (1) Child and Family Law Quarterly, 47 for arguments and evidence about the social, emotional and financial effect of the current law on intended parents who are not the legal parents from the birth of the child - the publications are based on research involving actual parental order case files. These impacts include financial impact in particular, as intended parents pay large costs for the medical process and then must find further sums of money for the legal process. Anecdotal evidence also suggests that the perception is that the legal process would favour a surrogate who changes her mind after the birth of a child from a DSA.

120 Consultation Question 112:

Please provide your views below:

No response – I am not an intended parent who has paid the cost of medical screening or counselling or a lawyer who has charged to negotiate and draft a surrogacy agreement.

Please provide your views below:

N/A

121 Consultation Question 113:

Please provide your views below:

Parental orders under the HFEA 1990 and 2008 was a mechanism for conferring parentage on those who had a genetic connection to a child or were a spouse/civil partner/partner of a person with a genetic connection to the child. It was never intended that this route should be used for those with no genetic connection to the child.

The parental order process and the new pathway should therefore remain restricted to those with a genetic connection to the child or the spouse/civil partner/partner of a person with a genetic connection to the child. It should not therefore include double donations which have more in common with adoption.

Cafcass have raised concerns in paragraph 12.8 of the Law Commission consultation paper about the potential for child trafficking in the case of double donation. These concerns do not appear to have been sufficiently addressed in the report and it is important that before double donations are permitted under the new pathway, a full risk assessment should be carried out.

Double donations do deserve recognition as a legitimate form of family formation but this can be done through other means such as a 'kinship order' or similar and that should be possible in either separate legislation or a separate section of the Surrogacy Act that recognises the difference. These should always (like ISAs) be subject to judicial determination on the question of legal parentage.

Please provide your views below:

See views expressed above. I would oppose removing the genetic link requirement for cases of medical necessity, for the new pathway or in the parental order route.

122 Consultation Question 114:

Please provide your views below:

N/A

123 Consultation Question 115:

Please provide your views below:

N/A

Please provide your views below:

N/A

124 Consultation Question 116:

Not Answered

Please provide your views below:

N/A

Please provide your views below:

N/A

Please provide your views below:

N/A

Please provide your views below:

N/A

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

No response - I am not an expert in this area.

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

None

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

[Name of organisation if relevant.]

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Surrogate
- Intended parent
- Person born of a surrogacy arrangement
- Family member of a surrogate
- Family member of an intended parent
- Legal practitioner
- Medical practitioner or counsellor
- Social worker
- Academic
- *Other individual*

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[REDACTED]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

(1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and

(2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration.

Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,

- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

- 1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;

- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in

surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or

parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Paragraph 8.77

Consultation Question 17.

1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

- 1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

- 1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

- 1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

- 1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 20:09:38

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

[REDACTED]

Hospitals NHS Trust

[REDACTED]

SurrogacyUK

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Medical practitioner or counsellor

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Not Answered

Please provide your views below:

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

Not Answered

Please provide your views below:

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Not Answered

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

Yes

Please provide your views below:

It is important that if the intention to parent and planning for the surrogacy arrangement has taken place as above the intended parents should be legal parents from birth.

15 Consultation Question 8:

Yes

Please provide your views below:

Another period

Please provide your views below:

I believe that 100 years is excessive - medical notes are not routinely kept that long e.g. maternity notes are usually kept up to 25 years after the last child is born. I think that this is appropriate for Surrogacy also especially as a register of surrogacy births is being recommended.

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Yes

Please provide your views below:

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

Yes it should - ideally there should be no use of anonymous gametes.

18 Consultation Question 11:

No

Please provide your views below:

I agree that the Surrogate should have a right to object. I am concerned that if something should happen acutely in the pregnancy or in the postnatal period the surrogate may not be in a position to register her objection. An additional clause for ill health should be added.

19 Consultation Question 12:

No

Please provide your views below:

20 Consultation Question 13:

Not Answered

Please provide your views below:

21 Consultation Question 14:

Yes

Please provide your views below:

22 Consultation Question 15:

Yes

Please provide your views below:

No

Please share your views below:

23 Consultation Question 16:

Yes

Please provide your views below:

Yes

Please provide your views below:

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

Yes

Please provide your views below:

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

26 Consultation Question 19:

Not Answered

Please provide your views below:

Please provide your views below:

27 Consultation Question 20:

Not Answered

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

29 Consultation Question 22:

Please provide your views below:

30 Consultation Question 23:

Please provide your views below:

31 Consultation Question 24:

Please provide your views below:

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

33 Consultation Question 26:

Not Answered

Please provide your views below:

34 Consultation Question 27:

Yes

Please provide your views below:

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Not Answered

Please provide your views below:

36 Consultation Question 29:

Please provide your views below:

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Not Answered

Please provide your views below:

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

39 Consultation Question 32:

Please provide your views below:

Please provide your views below:

40 Consultation Question 33:

Yes

Please provide your views below:

Not Answered

Please provide your views below:

No

Please provide your views below:

Volunteer organisations should have the ability to have a group responsible rather than a single person.

41 Consultation Question 34:

Please provide your views below:

Please provide your views below:

Please provide your views below:

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Yes

Please provide your views below:

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Not Answered

Please provide your views below:

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Yes

Please provide your views below:

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Not Answered

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

Not Answered

Please provide your views below:

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

Not Answered

Please provide your views below:

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Yes

Please provide your views below:

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Not Answered

Please provide your views below:

55 Consultation Question 47:

Yes

Please provide your views below:

Yes

Please provide your views below:

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

Yes - the same amount of information should be available as is recorded on the donor register.

57 Consultation Question 49:

Yes

Please provide your views below:

Please provide your views below:

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

59 Consultation Question 51:

Yes

Please provide your views below:

Please provide your views below:

60 Consultation Question 52:

Please provide your views below:

Please provide your views below:

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

63 Consultation Question 55:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

Yes

Please provide your views below:

Please provide your views below:

65 Consultation Question 57:

Please provide your views below:

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Not Answered

Please provide views below:

67 Consultation Question 59:

Yes

Please provide views below:

I strongly feel that Surrogacy under any circumstances should be for medical necessity only. There are risks associated with pregnancy and if there is no medical indication for Surrogacy, there is unnecessary risk to the surrogate irrespective of the surrogate providing freely informed consent to the process.

Please provide views below:

Yes

Please provide views below:

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

Not Answered

Please provide your views below:

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

Yes

Please provide views below:

70 Consultation Question 62:

Please provide your views below:

Surrogacy should only be accessed for medical necessity irrespective of the route to parenthood used.

Please provide your views below:

71 Consultation Question 63:

Yes

Please provide your views below:

Please provide your views below:

Yes

Please provide your views below:

72 Consultation Question 64:

Yes

Please provide your views below:

Please provide your views below:

Yes

Please provide your views below:

73 Consultation Question 65:

Yes

Please provide your views below:

Yes

Please provide your views below:

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Yes

Please provide your views below:

Please provide your views below:

75 Consultation Question 67:

Yes

Please provide your views below:

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

No

Please provide your views below:

I think regulated organisations can provide information and assess whether people understand the legalities of surrogacy. To other akin treatments legal advice is not enforced.

77 Consultation Question 69:

Yes

Please provide your views below:

Please provide your views below:

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

Yes

Please provide your views below:

To provide a maximum number would be paternalistic but there should be obstetric review for increased numbers of pregnancies due to the increased risk to the surrogate.

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Not Answered

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to surrogacy@lawcommission.gov.uk before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

[REDACTED]

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

4. If responding to this consultation in a personal capacity, which term below best describes you?

I am an academic in Sociology

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[REDACTED]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

Yes, these should.

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

These cases should NOT be heard by a lay judge, instead they should be heard by a senior judge e.g. ticketed to circuit judges or higher. This is because all surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness. This is why the arrangements should be overseen by a senior and experienced judge.

Paragraph 6.51

Consultation Question 3.

- 1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

No, I disagree.

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

Yes, I agree.

Paragraph 6.72

Consultation Question 6.

1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

Emphatically no. I disagree with this proposal, because it is in contradiction to the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate'

mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

- 1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I entirely disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in

surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as

the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy

human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the ‘new pathway’ – particularly the ‘intended parents’ acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the ‘intended parents’ being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Paragraph 8.77

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

None of the above answers are correct, in my view.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

- 1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

- 1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I absolutely disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women’s prostitution.

Paragraph 9.135

Consultation Question 42.

- 1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other ‘service’ organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed

gametes for the conception of the child has been medically verified, and that the information should include:

- (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;

- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the ‘intended parents’ to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur’s recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child’s country of birth.

Do consultees agree?

NO

Allowing the ‘intended parents’ to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur’s recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit.

There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 20:30:22

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

N/A

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Intended parent

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

NA

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

[REDACTED]

Please provide your views below:

If such cases were not to be allocated to the High Court, then a panel of judges with specific experience and expertise in this area should hear such cases.

9 Consultation Question 2:

Please provide your views below:

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

Not Answered

Please provide your views below:

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Yes

Please provide your views below:

A transparent approach would be better for all parties involved.

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

Yes

Please provide your views below:

This approach would better fit the intention of all the parties involved, which is that the intended parents are parents of the baby and should have legal and financial responsibility for the baby.

15 Consultation Question 8:

Yes

Please provide your views below:

Another period

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Yes

Please provide your views below:

The child should be able to have access to records of their biological parents once they are an appropriate age if they wish.

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

18 Consultation Question 11:

Yes

Please provide your views below:

This framework would better fit with the intention of all parties to the surrogacy arrangement, which is that the intended parents are to be the parents.

19 Consultation Question 12:

No

Please provide your views below:

In such circumstances, the presumption should be that the intended parents should all be recorded as the legal parents, with the surrogate needing to make an application for a parental order in order to reverse the position. Surrogates would be unlikely to enter into such arrangements unless they were happy with this position and intended parents would have greater legal certainty and be less likely to need to enter into surrogacy arrangements

overseas.

20 Consultation Question 13:

Yes

Please provide your views below:

Seems appropriate for a situation where the surrogate lacks capacity.

21 Consultation Question 14:

Yes

Please provide your views below:

22 Consultation Question 15:

Yes

Please provide your views below:

No

Please share your views below:

It wouldn't make sense for the surrogate's spouse to be a legal parent in a surrogacy context.

23 Consultation Question 16:

Yes

Please provide your views below:

This seems to be the compassionate route in such difficult circumstances.

Yes

Please provide your views below:

This seems to be the compassionate route in such difficult circumstances.

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

Yes

Please provide your views below:

This seems to be the compassionate route in such difficult circumstances.

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

26 Consultation Question 19:

Yes

Please provide your views below:

That would be consistent with the intention of all parties in a surrogacy arrangement.

Please provide your views below:

27 Consultation Question 20:

Not Answered

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

This model doesn't seem consistent with the intention of the parties to the surrogacy arrangement, which is that the intended parents should be the parents of the child.

If that model were to be adopted, the surrogate's rights could be extinguished if no objection were made by the surrogate within a specific period.

29 Consultation Question 22:

Please provide your views below:

Additional oversight should not be required.

30 Consultation Question 23:

Please provide your views below:

Additional factors should include: the existence of the surrogacy agreement; the parties' intentions; the child's genetic link to the parents; and the sibling relationships of the child.

31 Consultation Question 24:

Please provide your views below:

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

33 Consultation Question 26:

Yes

Please provide your views below:

It would make practical sense for the intended parents to have legal responsibilities which match their actual responsibilities where they are caring for the child.

34 Consultation Question 27:

Yes

Please provide your views below:

It would make practical sense for the intended parents to have legal responsibilities which match their actual responsibilities where they are caring for the child.

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

No

Please provide your views below:

This would not be consistent with the intention of the parties to the arrangement.

36 Consultation Question 29:

Please provide your views below:

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Yes

Please provide your views below:

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

39 Consultation Question 32:

Please provide your views below:

Please provide your views below:

40 Consultation Question 33:

Yes

Please provide your views below:

Yes

Please provide your views below:

Yes

Please provide your views below:

41 Consultation Question 34:

Please provide your views below:

Please provide your views below:

Please provide your views below:

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

No

Please provide your views below:

Profit making bodies should also be allowed.

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Not Answered

Please provide your views below:

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Not Answered

Please provide your views below:

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

No

Please provide your views below:

Surrogacy agreements should be enforceable.

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

Yes

Please provide your views below:

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

Yes

Please provide your views below:

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

No

Please provide your views below:

While the child should have the right to know, the child should not be required to disclose this fact to those looking at the birth certificate unless he or she wishes to.

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

55 Consultation Question 47:

Yes

Please provide your views below:

Yes

Please provide your views below:

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

57 Consultation Question 49:

Yes

Please provide your views below:

Please provide your views below:

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

59 Consultation Question 51:

Yes

Please provide your views below:

Please provide your views below:

Yes.

60 Consultation Question 52:

Please provide your views below:

Please provide your views below:

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

Yes. It is arbitrary.

63 Consultation Question 55:

Yes

Please provide your views below:

Makes practical sense.

Yes

Please provide your views below:

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

Yes

Please provide your views below:

Please provide your views below:

65 Consultation Question 57:

Please provide your views below:

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Yes

Please provide views below:

67 Consultation Question 59:

Yes

Please provide views below:

There could be other circumstances other than infertility where an intended parent would be unwilling to provide gametes eg. risk of inherited conditions.

Please provide views below:

No

Please provide views below:

A genetic link isn't the most important aspect of parenthood, it's the relationship formed with and love and attention given to the child.

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

Yes

Please provide your views below:

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

Yes

Please provide views below:

70 Consultation Question 62:

Please provide your views below:

Please provide your views below:

71 Consultation Question 63:

Yes

Please provide your views below:

Please provide your views below:

No

Please provide your views below:

Only with the surrogate's consent.

72 Consultation Question 64:

Yes

Please provide your views below:

Please provide your views below:

No maximum age limit, it should depend on the particular circumstances.

Yes

Please provide your views below:

73 Consultation Question 65:

Yes

Please provide your views below:

Yes

Please provide your views below:

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Yes

Please provide your views below:

Please provide your views below:

75 Consultation Question 67:

Yes

Please provide your views below:

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Yes

Please provide your views below:

77 Consultation Question 69:

Yes

Please provide your views below:

Please provide your views below:

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

Yes

Please provide your views below:

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

based on an allowance;

Please provide your views below:

The parties should be free to choose their financial arrangements. Producing receipts also appears unnecessarily cumbersome and not a productive use of everyone's time.

81 Consultation Question 73:

Please provide your views below:

All costs agreed between the parties should be allowed.

82 Consultation Question 74:

Please provide your views below:

All costs agreed between the parties should be allowed.

83 Consultation Question 75:

Please provide your views below:

All costs agreed between the parties should be allowed.

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

All costs agreed between the parties should be allowed.

85 Consultation Question 77:

Please provide your views below:

All costs agreed between the parties should be allowed.

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

pain and inconvenience arising from the pregnancy and childbirth; medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or, specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

Please provide your views below:

All costs agreed between the parties should be allowed.

Please provide your views below:

left to the parties to negotiate.

Please provide your views below:

The parties should be free to set their own arrangements.

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

89 Consultation Question 81:

Please provide your views below:

Gifts should be allowed. Intended parents should be able to express their gratitude to the surrogate.

90 Consultation Question 82:

It should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

Please provide your views below:

The parties should be free to set the financial terms of their own arrangements.

any sum agreed between the parties to the surrogacy; or

Please provide your views below:

The parties should be free to set the financial terms of their own arrangements.

essential costs relating to the pregnancy,, additional costs relating to the pregnancy,, lost earnings,, compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or, gifts.

Please provide any views below:

The parties should be free to set the financial terms of their own arrangements.

91 Consultation Question 83:

Please provide views below:

Yes. The parties should be free to set the financial terms of their own arrangements.

to any miscarriage or termination; or

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Not Answered

Please provide your views below:

If payments are to be restricted, wider categories of payments should be allowed outside the pathway to meet the reality, in particular, of international surrogacy arrangements.

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

95 Consultation Question 87:

Please provide your views below:

96 Consultation Question 88:

Other

Please provide your views below:

All terms of the surrogacy agreement should be enforceable.

Yes

Please provide your views below:

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

We, as intended parents, sought an obtained an [REDACTED] passport for our son as this was expected to be markedly quicker and more efficient than applying for a British passport. My husband has British and [REDACTED] nationality and so our son was entitled to both a British and [REDACTED] passport. We had heard that it was taking other couples over 6 months to obtain a British passport and that would have been a very long time to have been stranded abroad, without the support of family and friends with a new baby and in a county where we didn't speak the language. We were concerned that our baby might become ill in this waiting period and didn't have the same level of confidence in the medical care in the country where we were staying as the UK. This seemed deeply unfair to our child.

100 Consultation Question 92: We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?

Yes

Please provide your views below:

Anything which would speed up the application process would be an improvement.

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

102 Consultation Question 94:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Please provide your views below:

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

Not Answered

Please provide your views below:

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Yes

Please provide your views below:

It would make sense to have the consequences clearly set out in one place. We had questions not covered in the available materials, which the UK passport office did not seem able, or willing, to answer.

106 Consultation Question 98: We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood. Do consultees agree?

No

Please provide your views below:

International surrogacy arrangements should be eligible for the new procedure where designated territories or agencies are used.

107 Consultation Question 99:

Yes

Please provide your views below:

It would make sense for the secretary of state to have this power.

108 Consultation Question 100:

Please provide your views below:

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Not Answered

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

2018

international

If international, in which country did the arrangement take place?:

Yes

(a) opposite-sex couple;

118 Consultation Question 110:

international

Yes

Yes

Please provide the cost of any legal advice or representation below:

£25,000.

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

Emotionally, this involved a great deal of uncertainty, worry and stress. . Financially, there was a great deal of cost involved, which would have been better spent on our son.

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

international

Please provide your views below:

c£50k plus additional sums on staying abroad until we could bring our baby home plus £25k on legal fees.

Please provide your views below:

Savings.

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[Enter your name here.]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

[Name of organisation if relevant.]

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Other individual

5. What is your email address?

Email address:

[Enter your email address here.]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[Enter your phone number here.]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these

cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

- 1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

- 1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

- 1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

- 1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and

parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth

and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

- 1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

- 1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:
- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
 - (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

- 1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

- 1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

- 1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

- 1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

- 1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 20:52:51

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

N/A

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Other individual

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

No

Please provide your views below:

Consultation Question 4.

1.1 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

Yes

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

No

Please provide your views below:

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

15 Consultation Question 8:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

Not Answered

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway.'

18 Consultation Question 11:

No

Please provide your views below:

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

19 Consultation Question 12:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

20 Consultation Question 13:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent

change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

21 Consultation Question 14:

No

Please provide your views below:

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

22 Consultation Question 15:

No

Please provide your views below:

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

Yes

Please share your views below:

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

23 Consultation Question 16:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

No

Please provide your views below:

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

No

Please provide your views below:

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

26 Consultation Question 19:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

Please provide your views below:

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

27 Consultation Question 20:

Yes

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

29 Consultation Question 22:

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

30 Consultation Question 23:

Please provide your views below:

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

31 Consultation Question 24:

Please provide your views below:

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

33 Consultation Question 26:

No

Please provide your views below:

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

34 Consultation Question 27:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right

to object, assuming that she does not exercise her right to object. Do consultees agree?

Other

Please provide your views below:

I agree that the birth mother should have parental responsibility for the child but NOT that the 'intended parents' should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women's reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

36 Consultation Question 29:

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

N/A

39 Consultation Question 32:

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

40 Consultation Question 33:

No

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Other

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Other

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

41 Consultation Question 34:

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Other

Please provide your views below:

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Other

Please provide your views below:

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Yes

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

55 Consultation Question 47:

Yes

Please provide your views below:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

57 Consultation Question 49:

Yes

Please provide your views below:

Please provide your views below:

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

YES, this should be possible.

59 Consultation Question 51:

Yes

Please provide your views below:

Please provide your views below:

Yes

60 Consultation Question 52:

Please provide your views below:

Yes

Please provide your views below:

YES

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

63 Consultation Question 55:

No

Please provide your views below:

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

No

Please provide your views below:

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

Please provide your views below:

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

65 Consultation Question 57:

Please provide your views below:

The qualifying categories of relationship should not be reformed or removed.

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Other

Please provide views below:

I profoundly disagree with the proposals for the 'new pathway'.

67 Consultation Question 59:

No

Please provide views below:

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Please provide views below:

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

Yes

Please provide views below:

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

No

Please provide your views below:

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

No

Please provide views below:

I dispute that surrogacy is ever a 'medical necessity.'

70 Consultation Question 62:

Please provide your views below:

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

Please provide your views below:

I dispute that surrogacy is ever a 'medical necessity.'

71 Consultation Question 63:

Other

Please provide your views below:

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

Please provide your views below:

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

Yes

Please provide your views below:

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

72 Consultation Question 64:

No

Please provide your views below:

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

73 Consultation Question 65:

Other

Please provide your views below:

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Other

Please provide your views below:

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

Please provide your views below:

75 Consultation Question 67:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

77 Consultation Question 69:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

Please provide your views below:

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

No

Please provide your views below:

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

Not Answered

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

81 Consultation Question 73:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

82 Consultation Question 74:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

83 Consultation Question 75:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings

85 Consultation Question 77:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

Please provide your views below:

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Not Answered

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

This question illustrates the risks of surrogacy and why I oppose it.

89 Consultation Question 81:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

90 Consultation Question 82:

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

Not Answered

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

Please provide any views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

91 Consultation Question 83:

Please provide views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Not Answered

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Other

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts

95 Consultation Question 87:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

96 Consultation Question 88:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

N/A

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:

N/A

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

N/A

100 Consultation Question 92: We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?

No

Please provide your views below:

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

N/A

102 Consultation Question 94:

No

Please provide your views below:

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

No

Please provide your views below:

Yes

Please provide your views below:

Yes

Please provide your views below:

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child

Please provide your views below:

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

No

Please provide your views below:

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Other

Please provide your views below:

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

106 Consultation Question 98: We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

107 Consultation Question 99:

No

Please provide your views below:

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

108 Consultation Question 100:

Please provide your views below:

Please provide your views below:

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

I do not believe this needs changing.

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

No

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

115 Consultation Question 107:

Please provide your views below:

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

Please provide your views below:

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum

period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

Please provide your views below:

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

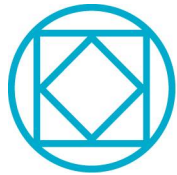
It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy>



Progress Educational Trust

informing debate on assisted conception and genetics

Response to The Law Commissions' Consultation on Surrogacy

11 October 2019

Name: [REDACTED]

Organisation: The Progress Educational Trust

This is a response on behalf of an organisation

Email: [REDACTED]

Tel: [REDACTED]

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and
- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

The answer depends on what happens with the proposed list of recognised jurisdictions, authorised by the Secretary of State (per para 16.20).

Should that go ahead, surrogacy arrangements that took place in recognised jurisdictions may be treated the same as the pathway and should not require judicial intervention.

Those that did not should continue to be allocated to the High Court, precisely because of the expertise in this area that has been accrued (per para 6.38).

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

N/A

Consultation Question 3.

1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

N/A

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

N/A

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

Paragraph 6.72

N/A

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consistency in law and regulation between Scotland and England and Wales is highly desirable, to avoid 'jurisdiction shopping'.

Consultation Question 7.

1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

Paragraph 8.13

We strongly agree that where the pathway is followed the IPs should become their child's legal parents at birth. However, we do not agree with the surrogate's proposed right to object, and what should happen in this instance.

Of course, a mechanism must be put in place for dispute resolution, but we believe that the IPs who followed the pathway should retain legal parenthood (and therefore PR) in this situation, subject to a procedure initiated by the surrogate to challenge it.

Lack of certainty around legal parenthood is one of the fears most often voiced by IPs and surrogates, and one of the reasons why people seek surrogacy abroad. Offering certainty is one of the best incentives to follow the proposed pathway.

Consultation Question 8.

- 1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Regulated surrogacy organisations should keep records of the arrangements that are conducted through them.

The duty to keep a record of the surrogacy arrangements should not be the responsibility of licensed clinics as their involvement in surrogacy is to provide clinical services.

The records should only need to be kept for 25-30 years, similarly to maternity records and the records already kept by clinics about licensed treatments (in most cases). More detailed records of e.g. genetic relationships should be kept on a separate register either held centrally by the regulator, or the birth registrar.

Consultation Question 9.

- 1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

Paragraph 8.21

Yes: children's rights to know their genetic origins should be consistent with the law on gamete donation.

Consultation Question 10.

- 1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Paragraph 8.22

Yes. Participation in the pathway should involve complying with law and best practice.

Consultation Question 11.

1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

Paragraph 8.35

We strongly agree that the IPs should have legal parenthood at birth.

However, we do not agree with the proposals regarding the surrogate's right to object, and what should happen should she do so. The IPs should retain legal parenthood (and therefore PR) in this situation, subject to the surrogate bringing proceedings to challenge it. Where the parties have 'followed the pathway' we would support a full reversal of the presumption of legal parenthood.

The surrogate would have the normal 'off pathway' window of 6 weeks to 6 months after the birth to apply for a parental order. This also avoids the very short 2-week window she would have to 'object' under Scottish law. Two weeks may pass very quickly if a woman is hospitalised with delivery complications.

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

Paragraph 8.36

We do not support the idea that, should the surrogate object, the pathway is exited, and she automatically becomes the legal parent.

If such a change is not incorporated into the new law then the certainty around parenthood which both surrogates and IPs are seeking will not be delivered.

Improving certainty should be a key aim of the legislation as it is in the best interests of the children and also the parties to the arrangement. Further, if another aim is to 'persuade' people to enter into arrangements in the UK rather than travel overseas, then certainty needs to be delivered by the new law.

A clear pathway must be set out for when things go wrong.

IPs should retain legal parenthood and PR, but a surrogate should be able to apply for a parental order to transfer legal parenthood to her, subject to the court's obligation to consider the child's welfare as paramount.

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

Paragraph 8.37

N/A

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

Paragraph 8.51

Yes, we agree that there should be no post-birth welfare of the child assessment. Families created through surrogacy should be treated the same as any other.

Consultation Question 15.

- 1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

- 1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

Paragraph 8.57

Per previous responses we believe that any objection by the surrogate should be in the form of applying for a parental order in order to be granted legal parenthood – if this option were to be pursued she could either apply as a solo applicant or jointly with her spouse/partner.

If her right to object post-birth *does* become part of the new law, and this means that she would gain legal parenthood at birth, then we do not believe that her spouse/partner should automatically be a legal parent.

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

Paragraph 8.77

Yes.

Consultation Question 17.

1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

Paragraph 8.79

Yes

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Paragraph 8.80

No. We believe that IPs should be the legal parents at/from birth in when the new pathway is followed.

Consultation Question 19.

- 1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

This would mean that, should the IPs die during the pregnancy, they should still be recognised as the child's legal parents (for succession etc rights).

- 1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

Paragraph 8.81

1.22 Yes

1.23 – we agree with option (1)

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

Paragraph 8.86

N/A

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

Paragraph 8.91

Per previous responses, we do not think that the surrogate should have legal parenthood, except through a successful application for a parental order.

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:
 - (a) administrative, or
 - (b) judicial.

Paragraph 8.93

In the proposed pathway, surrogacy arrangements will be overseen by regulated surrogacy organisations, in turn overseen by the regulator, which ought to be sufficient.

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

Paragraph 8.120

N/A

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

Paragraph 8.121

A checklist designed for adoption is not appropriate for use in surrogacy cases. A specific surrogacy checklist must be written and included in the regulator's code of practice.

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Paragraph 8.123

N/A

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

Paragraph 8.132

Yes. It is in the best interests of the child that the adults who live with and care for them have PR.

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

Paragraph 8.134

Yes. It is in the best interests of the child that the adults who live with and care for them have PR.

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

Paragraph 8.139

No.

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees' views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and
- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

Paragraph 8.140

PR should not be shared, except where a child arrangements order has been made to this effect.

Consultation Question 30.

1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

Paragraph 9.29

Yes.

Consultation Question 31.

1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Paragraph 9.35

N/A

Consultation Question 32.

- 1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.
- 1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

Paragraph 9.36

NO – per question 22. The regulator cannot effectively oversee these.

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;
- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and
- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

Paragraph 9.61

We agree that there should be regulated surrogacy organisations, and that these should not be required to take a particular form excepting some basic minimum requirements.

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

Paragraph 9.62

N/A

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

Paragraph 9.84

Yes.

Consultation Question 36.

- 1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Paragraph 9.94

N/A

Consultation Question 37.

- 1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

- 1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Paragraph 9.95

IPs and surrogates should be free to match independently (including through social media or between friends/family members) or through a non-profit organisation.

A regulated organisation will need to oversee participation in the pathway.

Consultation Question 38.

- 1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Paragraph 9.97

N/A

Consultation Question 39.

- 1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

- 1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

We agree that the HFEA would be best placed to perform this role. The HFEA would need additional resources to carry out this role as it is outside its current experience. It should create a separate Code of Practice for regulated surrogacy organisations.

Consultation Question 40.

- 1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

Paragraph 9.129

We agree that surrogacy arrangements should remain unenforceable (except financial terms), particularly any terms which may infringe the surrogate's (or other parties') autonomy or other rights.

Consultation Question 41.

- 1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

Paragraph 9.135

While we do not object to charges being made for negotiating, facilitating and advising on surrogacy arrangements they should be charged on a non-profit basis, regardless of whether a surrogacy agency or lawyer provides such services.

Consultation Question 42.

- 1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

Paragraph 9.145

Yes.

Consultation Question 43.

- 1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

Paragraph 10.80

Yes.

Consultation Question 44.

- 1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

Paragraph 10.85

There should be wider review of the law on birth registration and birth certificates.

We do not agree with this proposal as it would treat surrogate-born children differently from donor-conceived children.

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Paragraph 10.87

A full review of the law on birth registration and birth certificates is overdue.

In particular, the needs of trans people, and parties involved in donor conception (parents, donors, and DC-people) need addressing.

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

Paragraph 10.89

N/A

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

Paragraph 10.102

Yes. The register should capture all arrangements that have followed the new pathway and/or gone through a licensed clinic, as well as any arrangements subject to post-birth parental order applications.

Where donor gametes are used, these should be recorded on the national register of surrogacy or the gamete donor register maintained by the HFEA.

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Paragraph 10.104

Yes. The policy should be in line with gamete donation.

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree? Yes

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

Paragraph 10.110

Yes. The policy should be in line with gamete donation.

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Paragraph 10.114

No. Nobody should be able to access their partner's information without consent.

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

- 1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

Paragraph 10.121

Yes. We think the principles of the register of surrogacy births should align with those of the gamete donor register.

Consultation Question 52.

- 1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

Paragraph 10.123

Yes.

Consultation Question 53.

- 1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Yes. Where two people entered a surrogacy agreement, both should be recorded in the register even if they have no genetic link to the child. This is in the best interests of the child as both were instrumental in the child's conception.

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

Paragraph 11.20

It should be possible to obtain an order outside this time frame, but there should be an incentive for the parties to act in a timely manner.

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;
- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

Paragraph 11.58

Yes.

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

Paragraph 12.15

Yes. At least one IP should be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Additionally, to avoid the trafficking of women to act as surrogates the surrogate should be domiciled in the UK, Channel Islands or Isle of Man.

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

Paragraph 12.29

We agree with point (2).

Consultation Question 58.

1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

Paragraph 12.34

Yes.

Consultation Question 59.

1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree? We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

1.73 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

Paragraph 12.64

(1) We agree.

(2) Will medical necessity be defined by statute of will or will it be left to the discretion of a doctor? Opinions should be sought from the medical profession as to whether a statutory definition is desirable.

1.73 – Yes. However, there may be scenarios where it may be permitted. For example, in the jurisdictions recognised by the Secretary of State as complying with the pathway.

Consultation Question 60.

1.74 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

Paragraph 12.71

Yes.

Consultation Question 61.

- 1.75 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

Paragraph 12.76

Yes.

Consultation Question 62.

- 1.76 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

- 1.77 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

Paragraph 12.94

See comments about medical necessity in 1.72(2).

Consultation Question 63.

1.78 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

1.79 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

1.80 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

Paragraph 12.115

All genetic and gestational information should be entered on the register.

Consultation Question 64.

- 1.81 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

- 1.82 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

- 1.83 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

Paragraph 12.133

There should not be a statutorily defined maximum age for IPs.

The minimum age of 18 should be attained before either IPs or surrogates can enter into a surrogacy agreement.

The age of IPs can be considered as part of the assessment of the welfare of the child as carried out by regulated organisations. This would align with other assisted reproduction treatments.

Consultation Question 65.

- 1.84 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

- 1.85 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

Paragraph 12.144

Yes. The minimum age of 18 should be attained before either IPs or surrogates can enter into a surrogacy agreement.

Consultation Question 66.

1.86 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

1.87 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Yes.

Consultation Question 67.

1.88 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

Paragraph 13.44

Yes, however, the need may be reduced if the same IPs and surrogate work together for a second time.

Consultation Question 68.

1.89 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

Paragraph 13.65

There are concerns about costs here, as well as the worry that having separate legal representation could set an adversarial tone.

Again, where the same surrogate and IPs work together for a second time, this may be not be necessary.

Consultation Question 69.

1.90 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

Paragraph 13.73

We do not think that this should be mandatory, as they are not for any other form of fertility treatment.

We understand that criminal record checks are normally undertaken by surrogacy organisations, and of course they should continue to do so if they feel that best serves their members.

Consultation Question 70.

1.91 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Paragraph 13.95

We do not agree with this proposal.

Consultation Question 71.

1.92 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

Paragraph 13.99

We agree. A medical examination and risk assessment prior to any surrogacy should consider the total number of pregnancies (including her own children) that a woman has had, as part of an overall health assessment.

Consultation Question 72.

- 1.93 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:
- (1) based on an allowance;
 - (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
 - (3) based on costs actually incurred by the surrogate, and only on production of receipts.

Paragraph 15.16

We believe that surrogates should not be out of pocket by acting as a surrogate.

We would suggest a model based on costs incurred, with receipts only required for high-priced items rather than everyday supplies (e.g. over £100 – the figure could be defined in the Code of Practice).

It might be advisable to have a lower-value threshold for providing receipts (e.g. £50) for arrangements outside the pathway, to allow judicial scrutiny, and to encourage use of the pathway.

Consultation Question 73.

- 1.94 We invite consultees' views as to:
- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
 - (2) the types of expenditure which should be considered "essential".

Paragraph 15.22

Any expenses related to the pregnancy should be paid by the IPs. The distinction between 'essential' and 'additional' costs appears arbitrary and may cause further uncertainty and confusion.

Consultation Question 74.

1.95 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

Paragraph 15.26

Any expenses related to the pregnancy should be paid by the IPs. The distinction between 'essential' and 'additional' costs appears arbitrary and may cause further uncertainty and confusion.

Consultation Question 75.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

Paragraph 15.29

Any expenses related to the pregnancy should be paid by the IPs.

Consultation Question 76.

1.97 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Paragraph 15.37

We agree that lost earnings should be reimbursed.

Consultation Question 77.

1.98 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

Paragraph 15.38

We agree, where evidence can be shown.

Consultation Question 78.

1.99 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

Paragraph 15.47

N/A

Consultation Question 79.

1.100 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

1.101 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

1.102 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

Paragraph 15.53

Flat fees for procedures do not fall within expenses and should not be permitted.

We see compensation payments as inappropriate, however IPs could pay for insurance to cover any serious illness or injury arising from the pregnancy (e.g. an emergency hysterectomy).

Consultation Question 80.

1.103 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Paragraph 15.56

We see compensation payments as inappropriate, however, IPs could pay for insurance to cover unexpected adverse pregnancy complications including death.

Consultation Question 81.

1.104 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

Paragraph 15.60

Promises of gifts should not form part of the surrogacy agreement and should not be enforceable. However, it is neither desirable nor feasible for the state to regulate gifts that are freely given.

Consultation Question 82.

1.105 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

1.106 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

1.107 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Paragraph 15.69

Payments should be reimbursement for expenses only. IPs should not pay either a fixed fee or a negotiated sum for the 'service' of undertaking a surrogacy.

Consultation Question 83.

1.108 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarry

1.109 or termination of the pregnancy.

1.110 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Paragraph 15.72

We do not agree with this. Payments for expenses incurred should be honoured, however long the pregnancy lasts. Expenses could include counselling or therapy for the surrogate if the end of the pregnancy was traumatic.

Consultation Question 84.

1.111 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

Paragraph 15.74

We agree.

Consultation Question 85.

1.112 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Paragraph 15.75

No, but expenses should be able to include any physical or mental health support the surrogate requires after the birth but as a result of the pregnancy e.g. counselling, physical therapy, recovering fitness etc.

Consultation Question 86.

1.113 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Paragraph 15.76

An expenses model supports the welfare of the child – they can grow up not feeling they were 'bought'.

Consultation Question 87.

1.114 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

Paragraph 15.89

Enforcing the expenses-only model is certainly problematic but having clear law and a regulator sends a strong public policy message.

It is important that the threat of refusal to transfer legal parenthood is not the tool by which compliance with the rules is enforced, as the welfare of the child must always take priority.

Within the pathway we suggest that there could be penalties for regulated organisations who oversee surrogacy arrangements where limitations are breached.

Outside the pathway we suggest that receipts need to be shown at a lower threshold, to improve accountability, but also so that reduced administrative burden adds to the attractiveness of the pathway.

Consultation Question 88.

1.115 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

1.116 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

Paragraph 15.99

We agree. The surrogate should not be out-of-pocket, and her bodily autonomy must be respected.

Consultation Question 89.

1.117 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Paragraph 16.10

N/A

Consultation Question 90.

1.118 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Paragraph 16.12

N/A

Consultation Question 91.

1.119 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Paragraph 16.52

N/A

Consultation Question 92.

1.120 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

Paragraph 16.53

N/A

Consultation Question 93.

1.121 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Paragraph 16.68

N/A

Consultation Question 94.

1.122 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

1.123 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

1.124 We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

1.125 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

Paragraph 16.69

N/A

Consultation Question 95.

1.126 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

Paragraph 16.76

N/A

Consultation Question 96.

1.127 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Paragraph 16.77

N/A

Consultation Question 97.

1.128 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

Paragraph 16.82

Yes – but there needs to be a clear dissemination plan as well.

Consultation Question 98.

1.129 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

Paragraph 16.93

Yes.

Consultation Question 99.

1.130 We provisionally propose that:

1.131 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.132 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

Paragraph 16.94

Yes. The list should be subject to periodic review.

Consultation Question 100.

1.133 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

1.134 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Paragraph 16.120

N/A

Consultation Question 101.

1.135 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Paragraph 17.18

N/A

Consultation Question 102.

1.136 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

Paragraph 17.32

N/A

Consultation Question 103.

1.137 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

Paragraph 17.36

IPs should be treated the same as any expectant parents.

Consultation Question 104.

1.138 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Paragraph 17.40

N/A

Consultation Question 105.

1.139 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Paragraph 17.43

N/A

Consultation Question 106.

1.140 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Paragraph 17.56

N/A

Consultation Question 107.

- 1.141 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.
- 1.142 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.
- 1.143 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

Paragraph 17.76

Resources need to be provided for training medical professionals and helping them to understand surrogacy.

Consultation Question 108.

- 1.144 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Paragraph 17.80

N/A

Consultation Question 109.

1.145 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

Paragraph 18.2

N/A

Consultation Question 110.

1.146 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

Paragraph 18.4

N/A

Consultation Question 111.

1.147 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

N/A

Consultation Question 112.

1.148 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

1.149 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and
- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

Paragraph 18.8

N/A

Consultation Question 113.

1.150 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

N/A

Consultation Question 114.

1.151 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

Paragraph 18.13

N/A

Consultation Question 115.

1.152 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

1.153 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

Paragraph 18.15

N/A

Consultation Question 116.

1.154 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

Paragraph 18.18

N/A

Consultation Question 117.

1.155 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

N/A

Consultation Question 118.

1.156 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

Paragraph 18.22

While we understand that surrogacy gives rise to many complex issues, and we appreciate the thorough nature of the review, we are concerned that the sheer length of the consultation document will have discouraged some people from participating.

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 21:19:08

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Other individual

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

Surrogacy as a form of exploitation of poor women in poor countries has been one of the most unsavoury aspects of the increase in surrogacy in recent years. This form of modern slavery is quite clearly unacceptable.

Any proposed reform of the law(s) surrounding surrogacy that does not seek to address this fact should be rejected outright.

International surrogacy arrangements should not be allowed at all unless all of the following conditions are met:

- a) the mother and child(ren) including any children she may already have before undertaking the surrogacy agreement already have the right to live in the UK, even though they currently do not (that is, the aim of achieving UK residency for a child must not be an incentive);
- b) the mother's home country and country of residence are "as wealthy" as the UK (that is, poorer countries with possibly chaotic health, legal and education systems must not be targeted);
- c) the mother personally is "as wealthy" as the adopting parents (that is, financial gain should not be an incentive)
- d) health service provisions in the mother's country of residence are internationally recognised as comparable to or exceeding NHS provisions

The aim of any and all legislation around international surrogacy arrangements must be, to provide the best possible guarantees that exploitative arrangements cannot be created.

Implementing or attempting to implement a surrogacy arrangement without such safeguards should be a criminal offence, with penalties based on those around all other human trafficking.

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

Domestic and international cases should be treated identically including the level of judiciary involved. There should be no "grading" of children in this way.

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

No

Please provide your views below:

Under no circumstances should a parental order be issued until all stages of proceedings are complete.

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

No

Please provide your views below:

Under no circumstances should a parental order be issued until all stages of proceedings are complete.

13 Consultation Question 6:

Please provide your views below:

I am not resident in Scotland.

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

No

Please provide your views below:

Birth documentation must record facts, not intentions. If the woman giving birth chooses to name a father on the birth certificate that is her choice, in a "surrogacy" situation as any other. If she is married, then her husband is automatically the father of the child, in a "surrogacy" situation as in any other.

The law must not create classes of women giving birth or classes of children.

15 Consultation Question 8:

Yes

Please provide your views below:

Regulated organisations should keep full records regardless of "pathway".

Another period

Please provide your views below:

For ever.

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Yes

Please provide your views below:

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

As above

18 Consultation Question 11:

No

Please provide your views below:

The adoption process should proceed just like any other. The mother should have the right to object before and during the proceedings no matter how long the legal process lasts.

As in other adoption/care order situations the child's interest is the primary consideration. There should be no differentiation whatsoever between a care/adoption arrangement arising from a surrogacy arrangement and one arising from any other setting, because it is the child that matters. The adults per se do not, and the mechanism whereby they have found themselves in an adoption/care order dispute is irrelevant whether that be adoption, surrogacy, divorce, local authority care order proceedings or anything else.

19 Consultation Question 12:

Other

Please provide your views below:

If one of the intended parents is the genetic father of the child then they should have the same rights as any other father in a similar situation. If they are not then they should have the same rights (or lack of) as any other non-parent adult in an analogous situation.

As in other care/adoption situations the child's interest is the primary consideration. There should be no differentiation whatsoever between a care/adoption arrangement arising from a surrogacy arrangement and one arising from any other setting, because it is the child that matters. The adults per se do not, and the mechanism whereby they have found themselves in (say) a child residency dispute is irrelevant whether that be adoption, surrogacy, divorce, local authority care order proceedings or anything else.

20 Consultation Question 13:

No

Please provide your views below:

The "intended parents" should not be registering the birth at all as they are not the birth parents.

If a) one of the "intended parents" is the father of the child and b) the registration of the birth is taking place in the UK (that is, the mother is also resident in the UK and c) the mother wishes it then that person can be named as the father on the birth certificate. As with any other birth.

The law must not create different classes of children.

21 Consultation Question 14:

Other

Please provide your views below:

There may be a place for additional safeguards and codes of practice for surrogacy arrangements but that should be in addition to, and not instead of, statutory responsibilities that would apply in, say, adoption to, say, a Local Authority.

22 Consultation Question 15:

No

Please provide your views below:

The child should be treated no differently from any other. If in the jurisdiction where the child is born, a child born to a woman becomes the legal child of her spouse or civil partner then that should apply in this situation too. If not then not.

Children should not be treated differently because of the choices adults made before they were even conceived.

Yes

Please share your views below:

See above.

23 Consultation Question 16:

No

Please provide your views below:

See above re requirement for birth certificate etc to record fact not intentions.

The idea that people should be able to apply for a court order to be named the parents of a stillborn child is frankly macabre.

No

Please provide your views below:

See above

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

No

Please provide your views below:

see above

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

If the mother dies in childbirth, or in a way attributable to the pregnancy, the "intended parents" should be investigated for murder and/or manslaughter. It will, of course, be the case in almost all cases that the mother's death could not have been foreseen, and the "intended parents" will not of course be found to have committed any crime.

If the mother is dead then any surrogacy agreement made with her has died with her.

The "intended parents" would of course be free to apply for an adoption order if they wished; this should be processed like any other adoption order.

26 Consultation Question 19:

No

Please provide your views below:

If one of the dead "intended parents" is the father of the child and the mother wishes that recorded on the birth certificate, that should be her choice.

Please provide your views below:

27 Consultation Question 20:

Not Answered

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

There should be no "three parent" model; the law must not create different classes of children.

The legal parenthood of the surrogate must under no circumstances be "extinguished".

29 Consultation Question 22:

Please provide your views below:

30 Consultation Question 23:

Please provide your views below:

31 Consultation Question 24:

Please provide your views below:

The processes for the adoption of a child born from surrogacy should in all circumstances and in all ways be identical to those for any other child.

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

33 Consultation Question 26:

No

Please provide your views below:

The processes for the adoption of a child born from surrogacy should in all circumstances and in all ways be identical to those for any other child.

34 Consultation Question 27:

No

Please provide your views below:

The processes for the adoption of a child born from surrogacy should in all circumstances and in all ways be identical to those for any other child.

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

No

Please provide your views below:

The processes for the adoption of a child born from surrogacy should in all circumstances and in all ways be identical to those for any other child.

36 Consultation Question 29:

Please provide your views below:

The processes for the adoption of a child born from surrogacy should in all circumstances and in all ways be identical to those for any other child.

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Other

Please provide your views below:

I cannot see that any case for a "new pathway" has been made. But, certainly there should be few if any differences made between "types" of surrogacy. The only one that I can see is required is recording of the fact of egg donation, for the benefit of the child (to be able to know this at 18).

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

39 Consultation Question 32:

Please provide your views below:

Please provide your views below:

40 Consultation Question 33:

Other

Please provide your views below:

Surely you are asking the wrong question? Do you mean "All surrogacy organisations should be regulated, do you agree?"

No

Please provide your views below:

Regulated either means regulated or it does not.

Other

Please provide your views below:

Every single person (trustees, staff, possibly even volunteers) in such an organisation should be considered to have a responsibility for ensuring that the law is followed.

The licensing framework must be focussed on child protection and safeguarding. I can see no reason why the legislation around and regulation of such organisations should be substantially different from that governing adoption processes (whether those are Local Authority or charitable/other adoption agencies).

41 Consultation Question 34:

Please provide your views below:

None of the above (while all may be valuable) is worth a jot unless the organisation's primary responsibility is to the children it deals with.

Please provide your views below:

Please provide your views below:

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Yes

Please provide your views below:

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

1. The welfare of the child.

2. The welfare of the child.

3. The welfare of the child.

99. The welfare of the child.

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Other

Please provide your views below:

No organisation that is not regulated should be allowed to provide arrangements at all.

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

No organisation that is not regulated should be allowed to provide arrangements at all.

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

It should be a criminal offence to run any kind of *commercial* service without licence.

It probably seems impossible to legislate for (say) a discussion thread on Mumsnet where people muse about their ideas about and experiences of surrogacy which results eventually in people linking up and making surrogacy arrangements.

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Yes

Please provide your views below:

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Yes

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

It should in all circumstances be illegal.

Cf adoption: agencies cannot charge for their services. If they are charitable/private organisations they must fundraise in other ways.

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Other

Please provide your views below:

The intended parents should *not* be recorded on the birth certificate (though see earlier responses re when one of them is the child's genetic father).

As a result of a parental order - as in the case of adoption - a revised birth certificate should be issued *but the original should not change* and the child should have the same access to the relevant information.

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

Birth certificates record fact, and should never be overwritten.

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

55 Consultation Question 47:

Yes

Please provide your views below:

Other

Please provide your views below:

Anonymous sperm donation and anonymous egg donation should not be permitted; current HFEA regulations offer privacy to donors covering what information is released to children and at what age, and this should be retained, and surrogacy arrangements that cannot offer that knowledge to the children born as a result should be viewed as unregulated and thus not subject to any UK law on surrogacy.

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

The information recorded should be *completely* identifying (but of course privacy considerations should apply). Recording, access and publication are different things.

Recording: Complete, identifying, 100% accurate.

Access: the involved parties and particularly children born as a result; regulatory requirements; (anonymised) statistical reporting; and so on.

Publication: anonymised only and very limited.

Etc.

57 Consultation Question 49:

Other

Please provide your views below:

Yes but see above

Please provide your views below:

Many other circumstances including:

1. Health reasons, At any age a child's HCPs might need to know about family history of disease etc. HCPs should be able to check [anonymised] data about whether legal parents are biological parents or not. This information should be available on medical records *from the child's birth* and, if it becomes relevant, full personal information must be made available.

2. Local authority should be able to access information if child is taken into care

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

Surely this should be mandatory?!

59 Consultation Question 51:

Yes

Please provide your views below:

Please provide your views below:

Yes of course.

60 Consultation Question 52:

Please provide your views below:

Yes of course.

Please provide your views below:

Yes of course.

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

1. There is no justification for separate "pathways". There are children and that is all.

2. No.

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

63 Consultation Question 55:

Other

Please provide your views below:

The laws about adoption should be identical for all children, whether surrogacy is a factor or not.

Not Answered

Please provide your views below:

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

No

Please provide your views below:

Either the state regulates surrogacy or it does not. I accept that private arrangements between individuals may always exist and may always fall outside regulation but that apart, the state must not regulate "some" surrogacy arrangements differently from others. Regulate or don't.

And: if the state is not going to impose "medical testing of the [woman], any partner of the [woman], and any [man or woman] providing gametes" when people get married or enter a civil partnership, or indeed have random one night stands in nightclubs then no, "Pathway" or no pathway.

Individuals may choose to undertake such tests and indeed non-medical ones, and there may be a role for advice on what tests it might be a good idea to undertake. For example all participants should probably be encouraged to insist that all parties provide the highest level of CRB check.

Please provide your views below:

75 Consultation Question 67:

Other

Please provide your views below:

Regulate or don't. Etc.

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is

signed. Do consultees agree?

Other

Please provide your views below:

Regulate or don't. Etc.

77 Consultation Question 69:

Other

Please provide your views below:

Regulate or don't. Etc.

Please provide your views below:

This would seem to me a sensible approach yes.

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

No

Please provide your views below:

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

based on an allowance;

Please provide your views below:

The allowance should be zero, This is the only way that I can see to ensure that all participants in the process are genuinely willing to participate.

Any payment whatsoever is a form of coercion.

81 Consultation Question 73:

Please provide your views below:

Any reform of the laws around surrogacy must aim to entirely remove all and every financial incentives.

I would in fact argue that reform must make it a requirement that the mother must pay the "intended parents", even if the sum involved is nominal, to achieve this.

82 Consultation Question 74:

Please provide your views below:

Any and all financial incentives are entirely unacceptable.

83 Consultation Question 75:

Please provide your views below:

See above

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

See above

85 Consultation Question 77:

Please provide your views below:

See above

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

Please provide your views below:

I urge the people who designed this consultation (and the proposed "pathway") to look long and hard at this question.

You are asking people to put a price on their body parts.

You are asking people to put a price on their health.

You are asking people to put a price on their potential death.

You are asking women, but not men, to do this.

Please provide your views below:

None.

Not Answered

Please provide your views below:

If the UK is going to view pregnancy as a financial transaction it should decide a value and then decide who is going to pay it, and this should apply to all pregnancies. For example, "going through a pregnancy is worth £100,000. In the case of surrogacy arrangements, the procurer will pay this amount to the pregnant woman. In the case of rape victims, the rapist will pay the victim. In the case of a married woman getting pregnant ... er ... in the case of a single woman getting pregnant ... er ... "

Doesn't work, does it? The alternative might be to recognise that pregnancy is *not* a financial transaction? And that if you are making it so, you need to think again?

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

"Should people be allowed to pay women to die?"

I despair.

89 Consultation Question 81:

Please provide your views below:

90 Consultation Question 82:

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

Please provide your views below:

Not Answered

Please provide your views below:

Please provide any views below:

91 Consultation Question 83:

Please provide views below:

Not Answered

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Not Answered

Please provide your views below:

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

95 Consultation Question 87:

Please provide your views below:

96 Consultation Question 88:

No

Please provide your views below:

There should be no financial terms whatsoever.

Other

Please provide your views below:

There should be no financial terms whatsoever.

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

100 Consultation Question 92: We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?

Not Answered

Please provide your views below:

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

102 Consultation Question 94:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Please provide your views below:

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

Not Answered

Please provide your views below:

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Not Answered

Please provide your views below:

106 Consultation Question 98: We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood. Do consultees agree?

Not Answered

Please provide your views below:

107 Consultation Question 99:

Not Answered

Please provide your views below:

108 Consultation Question 100:

Please provide your views below:

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

There should be no differentiation between children born as a result of surrogacy and any other child.

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Other

Please provide your views below:

There should be no differentiation between people adopting a children born as a result of surrogacy and any other parents.

111 Consultation Question 103:

Please provide your views below:

There should be no differentiation between people adopting a children born as a result of surrogacy and any other parents.

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

By definition no "intended parent" in a surrogacy arrangement can be a "pregnant woman" or "nursing mother". If a woman is an "intended parent" planning to lactate she should of course have the same rights as any other woman adopting .

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

The exploitation of the bodies of poor women in poor countries must end. It is my view that in any surrogacy arrangement the law must consider firstly the well being and welfare of the child born, and secondly the well being, welfare, health and rights of the mother. The "intended parents" are not the ones risking their health and lives in this process and are to all intents and purposes not very relevant.

115 Consultation Question 107:

Please provide your views below:

Surrogacy should be illegal unless the mother has access to NHS services should she want them (that is, the mother should have by right be able live in the UK, even if she currently does not). To clarify: I am not arguing that surrogacy should mean that a mother that does not already have that right should be given it; I am arguing that only women that live in the UK or that already have the right to do so should be recognised in law as potential surrogates, and that soliciting the pregnancy of women that do not should be a criminal offence.

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

You have not supplied any Equality Impact Assessment as part of this process. I am unclear whether the Law Commission counts as a public body in that context but you, being the Law Commission, should know.

"Surrogacy" is the taking-over of a woman's body, no matter how favourably you think of it, and your proposals and this consultation entirely fail to recognise that. There are situations in which it is an agreement and a risk organised between people that trust each other and which works for those people and for the child born as a result. All other situations are no different from slavery and prostitution.

You have not supplied any evidence that a woman pregnant with a baby that is not biologically related to her (gamete donation) is less safe than she would be if pregnant with her own child (because, of course, she is not).

You have not supplied any evidence that the treatments required to attain exogenous pregnancy are safe for the pregnant woman (because they are not).

And so on.

Women do not exist to provide random babies to random people. Any consideration of surrogacy that does not take that as its starting point should be laughed out of court.

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

[Name of organisation if relevant.]

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Other individual

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[REDACTED]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these

cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

- 1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

- 1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

- 1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

- 1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and

parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth

and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

- 1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

- 1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:
- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
 - (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

- 1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

- 1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

- 1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

- 1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

- 1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 21:22:38

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Other individual

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

All International surrogacy arrangements should continue to be automatically allocated to a Judge of the High Court.

Especially since there is a well known history of international surrogacy abuse and exploitation. It is essential that a high level of scrutiny be maintained.

Please provide your views below:

All international surrogacy cases should require a legal parental order post-birth and be dealt with at the current level of the judiciary, so that parental order processes, involving qualified social work assessments can take place.

9 Consultation Question 2:

Please provide your views below:

Domestic surrogacy should also be heard by a high court judge.

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

No

Please provide your views below:

The woman who is pregnant should have first right to parental responsibility and any other parents who are added should be carefully considered in each case.

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Yes

Please provide your views below:

The parental order report should be released to the parties in the proceedings by default.

The circumstances under which a court can decide otherwise should be clarified.

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

No

Please provide your views below:

The Intended parents should not be documented as the legal parents at birth. This would reduce the birth mother to a vessel, a container, such knowledge of which would be detrimental to the mental health of the child, and against the healthy formation of their identity. This proposal weakens the surrogate's right to change her mind.

The pregnant woman should be the primary parent, the 'intended' parents should be considered at a later date not immediately on the birth of the child.

The aim of this proposal seems to be to reduce the time pressure on the courts to make it immediately possible to remove a baby from the birth mother.

15 Consultation Question 8:

Yes

Please provide your views below:

Records are important so they should be held for a considerable length of time, possibly indefinitely.

Another period

Please provide your views below:

Record should be held indefinitely. They are historical documents.

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Yes

Please provide your views below:

No surrogate birth should result from anonymous donation, there should always be full, complete records so that any resulting child of such an arrangement can track their genetic identity if they wish or need to.

This is about the rights of the child and if there is no prohibition on the use of anonymously donated gametes in traditional surrogacy arrangements, the right of the child to discover their genetic identity would be limited and there may be a risk attraction to closely related persons.

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

No surrogate birth should result from anonymous donation, there should always be full, complete records.

The surrogate should also have the right to object to the acquisition of legal status by the Intended Parents immediately after the birth and before the baby is handed over. This consultation takes no account of the natural link between birth mother and baby and assumes an immediate hand-over, whether the birth mother objects or not. The birth mother should have the right to change her mind.

18 Consultation Question 11:

Other

Please provide your views below:

(1) The fixed period should be of decent length.

(2) & (3) The defined period should be a lengthy one.

19 Consultation Question 12:

Other

Please provide your views below:

(1) Yes

(2) Yes

(3) No, the pregnant woman's decision should be final on this matter.

20 Consultation Question 13:

Yes

Please provide your views below:

21 Consultation Question 14:

No

Please provide your views below:

Any child resulting from surrogacy should have a welfare assessment after birth via the organising organisation or regulated clinic with full records retained.

22 Consultation Question 15:

Yes

Please provide your views below:

No

Please share your views below:

23 Consultation Question 16:

No

Please provide your views below:

I oppose the proposal that the commissioning parents should be the legal parents of a stillborn baby. Their disappointment will be diminished by the grief of the birth mother who already has a relationship with the child in her womb. What safeguards are planned in the new pathway should the woman surrogate die? What financial protections would there be for the woman's existing children and family?

Other

Please provide your views below:

Records should be historically accurate and it would not to correct to record a stillborn child to the commissioning parents.

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

Yes

Please provide your views below:

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

Yes they should be required.

26 Consultation Question 19:

No

Please provide your views below:

Records are important and the truth should be recorded, the natural not the intended parent.

Please provide your views below:

(2) the surrogate should be registered but gamete donors should be clearly recorded too in relevant cases.

27 Consultation Question 20:

Other

Please provide your views below:

It can take more than one parent to make a child and this should be recorded whether or not they intend to be fully involved.

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

29 Consultation Question 22:

Please provide your views below:

Yes and it should be (b) Judicial oversight so the surrogate and any resulting child's rights are fully protected, especially with regard to the chances for the surrogate to change their mind for any reason without undue external pressure being placed on them by the intended parents side.

The surrogacy business should be banned not made easier. There is no evidence in the proposed changes that the surrogacy business, which benefits Agencies, lawyers and those commissioning a surrogate (who is expected to carry a child as an altruistic act) should be made easier for those who profit. The evidence points to banning or severely restricting surrogacy practices as has been done in European countries such as Switzerland, France, Germany and Sweden and further afield in India and Thailand.

30 Consultation Question 23:

Please provide your views below:

(1) Yes it should amended

(2) The resulting child's rights should be uppermost and fully considered and protected.

31 Consultation Question 24:

Please provide your views below:

It is remarkable given the years of current surrogacy enablement in UK that those involved are not, never have been, subject to Adoption and Child Act (ACA) 2002.

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

No, leave should always be required.

33 Consultation Question 26:

No

Please provide your views below:

The intended parents should not acquire anything automatically in any case. It should always be deliberated on in each case.

34 Consultation Question 27:

No

Please provide your views below:

Parental responsibility should be granted not acquired automatically.

I disagree with the provisional proposal that, where a child is born of a surrogacy arrangement, the Intended Parents should acquire parental responsibility on the birth of the baby. This pathway will take no account of, and fails to recognise, the bond which is formed between mother and baby during and after the gestational period and the right of a child to know the identity of their birth mother.

This pathway will favour the Intended Parents and the removes the right of the child to have a biologically accurate birth record.

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Yes

Please provide your views below:

The birth mother should retain parental responsibility for the child until the expiry of the period during which she can exercise her right to object.

36 Consultation Question 29:

Please provide your views below:

Parental responsibility should be fully retained not restricted during the period.

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Other

Please provide your views below:

Whichever system gives the most oversight of cases should be used.

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

The views of independent surrogates are unlikely to be well represented, particularly overseas surrogates, mainly poor and uneducated and often exploited. Their voices will be silenced in this debate.

39 Consultation Question 32:

Please provide your views below:

This consultation is built on a pro-surrogacy bias. There is no hard evidence of the long term impact upon the child who is a surrogate or the mother who gave birth to them. The entitlement to 'found a family' has been reinterpreted to 'found a family=the right to have a child by surrogacy'. The consultation seems to accept that breaching surrogate women's human rights not to experience dehumanising practices is lost in the attempt to covertly enable baby buyers to 'found a family'.

Please provide your views below:

40 Consultation Question 33:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Yes

Please provide your views below:

41 Consultation Question 34:

Please provide your views below:

Please provide your views below:

Please provide your views below:

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Not Answered

Please provide your views below:

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Not Answered

Please provide your views below:

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Not Answered

Please provide your views below:

The prime concern of the consultation is the 'commissioners', so they can have ease of access to buying a baby, not the well being of the woman surrogate. The vast majority of woman surrogates come from poorer circumstances than the 'commissioners' and yet the law wants to describe that as 'altruistic' rather than what it actually is - commercial surrogacy which is not legal.

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Not Answered

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

Not Answered

Please provide your views below:

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

Not Answered

Please provide your views below:

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Yes

Please provide your views below:

Historical records should clearly reflect the truth of the surrogate arrangement and the birth certificate is a his a historical record.

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

It might be useful to record the time of birth as I think is done in Scotland to give fuller information, at the moment I think it is only done for children born of twin or multiple births.

The right of a mother not married to her partner to register her child on her own, without a partner should be retained and should not be offered to the father if not married to the mother.

The mother and the father should be clearly marked and not downgraded to being parent one etc.

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Other

Please provide your views below:

Provisionally agree but counselling should be compulsory before getting access to such files.

55 Consultation Question 47:

Yes

Please provide your views below:

Absolutely necessary.

Yes

Please provide your views below:

Historical accuracy in records is important for a functioning society.

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

Yes all information should be available for children born of surrogacy.

57 Consultation Question 49:

Yes

Please provide your views below:

It seems sensible to have a process of information released in stages.

Please provide your views below:

(2) seems the most reasonable path, the legal parents should not be able to block access indefinitely.

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

Children born of surrogacy arrangement, where there is or is not a genetic connection to the birth mother, should have access to all facts relating to their birth heritage and origins. A practice adoption agencies now recognise as key elements for children's rights, security and healthy maturity.

59 Consultation Question 51:

Yes

Please provide your views below:

Some form of counselling to help both parties reach a decision might be useful in this area but ultimately children born of surrogacy should have to right to know who their genetic relatives are.

Please provide your views below:

These individuals have a connection in that they were carried in the same womb even if not genetically related and should be able to explore that connection if they wish.

60 Consultation Question 52:

Please provide your views below:

Yes, the same reasons exist for this to happen as exist for children born of surrogacy who are genetically related and gestated in the same womb.

Please provide your views below:

Yes, the same reasons exist for this to happen as exist for children born of surrogacy who are not genetically related and gestated in the same womb.

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

All records should reflect the historical truth so if the party is not in the application, they should not be recorded in the register.

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

There should continue to be a time limit on this.

63 Consultation Question 55:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

Yes

Please provide your views below:

Please provide your views below:

65 Consultation Question 57:

Please provide your views below:

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Not Answered

Please provide views below:

67 Consultation Question 59:

Not Answered

Please provide views below:

Please provide views below:

Yes

Please provide views below:

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

Not Answered

Please provide your views below:

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

Not Answered

Please provide views below:

70 Consultation Question 62:

Please provide your views below:

Please provide your views below:

71 Consultation Question 63:

Not Answered

Please provide your views below:

Please provide your views below:

Not Answered

Please provide your views below:

72 Consultation Question 64:

Not Answered

Please provide your views below:

Please provide your views below:

Not Answered

Please provide your views below:

73 Consultation Question 65:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Not Answered

Please provide your views below:

Please provide your views below:

75 Consultation Question 67:

Not Answered

Please provide your views below:

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Not Answered

Please provide your views below:

77 Consultation Question 69:

Not Answered

Please provide your views below:

Please provide your views below:

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

Not Answered

Please provide your views below:

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

based on costs actually incurred by the surrogate, but without the need for production of receipts; or

Please provide your views below:

Payment for surrogacy reduces it to a commercial transaction or the purchase of a child. Costs will inevitably be incurred during the pregnancy though and should be repaid. although it is wrong to profit from the situation.

81 Consultation Question 73:

Please provide your views below:

82 Consultation Question 74:

Please provide your views below:

83 Consultation Question 75:

Please provide your views below:

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

It should probably be on a 'like for like' basis so the surrogate is not disadvantaged financially .

85 Consultation Question 77:

Please provide your views below:

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

Please provide your views below:

Please provide your views below:

Not Answered

Please provide your views below:

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

89 Consultation Question 81:

Please provide your views below:

90 Consultation Question 82:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Please provide any views below:

91 Consultation Question 83:

Please provide views below:

Not Answered

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Not Answered

Please provide your views below:

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

95 Consultation Question 87:

Please provide your views below:

96 Consultation Question 88:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

100 Consultation Question 92: We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?

Not Answered

Please provide your views below:

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

102 Consultation Question 94:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Please provide your views below:

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

Not Answered

Please provide your views below:

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Not Answered

Please provide your views below:

106 Consultation Question 98: We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood. Do consultees agree?

Not Answered

Please provide your views below:

107 Consultation Question 99:

Not Answered

Please provide your views below:

108 Consultation Question 100:

Please provide your views below:

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

No

Please provide your views below:

The surrogate mother should always be the recipient of maternity allowance,

111 Consultation Question 103:

Please provide your views below:

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

N/A

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Other individual

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[REDACTED]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these

cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

- 1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

- 1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

- 1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

- 1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and

parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth

and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

- 1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

- 1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:
- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
 - (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

- 1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

- 1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

- 1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

- 1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

- 1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Response ID ANON-2V7F-Y83Y-2

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 22:00:36

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Other individual

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

63 Consultation Question 55:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

Not Answered

Please provide your views below:

Please provide your views below:

65 Consultation Question 57:

Please provide your views below:

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Not Answered

Please provide views below:

67 Consultation Question 59:

Not Answered

Please provide views below:

Please provide views below:

Not Answered

Please provide views below:

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

Not Answered

Please provide your views below:

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

Not Answered

Please provide views below:

70 Consultation Question 62:

Please provide your views below:

Please provide your views below:

71 Consultation Question 63:

Not Answered

Please provide your views below:

Please provide your views below:

Not Answered

Please provide your views below:

72 Consultation Question 64:

No

Please provide your views below:

It is not fair on a child to be born to geriatric parents. It is hard work raising a child, and demanding physically. Children need lots of exercise, and fun, kicking a ball in the park, going for long walks and hiking and tree climbing, learning to swim and having regular trips to the swimming pool. Older parents may find some of these activities challenging when the children are young. This will only become more difficult as the child grows up and the parents age, and their health begins to fail.

Parents who are aged 50 when the child is born will be aged 67 when the child is 17 and wanting driving lessons, or to be chauffeured around late at night until they gain the independence of being able to drive alone. They will be nearly 79 when their child goes to university. Many people are suffering a range of illnesses or indeed may have died before that age. It is very unfair to inflict these difficulties on a child.

Please provide your views below:

As above.

No

Please provide your views below:

What a ridiculous suggestion. How would an 18 year old fund the costs of a surrogate pregnancy given that your own research at 14.16 states the median payment for 2015-2019 was £14,795.54

Could it be other family members, maybe the 18 year old's parents, want a baby and use the 18 year old as a front? Or maybe a coercive person in a relationship with the 18 year old.

No 18 year old is mature enough to undertake arranging a surrogate pregnancy and becoming the parent of any child arising.

Furthermore they should be at school or university or some other training or starting out on a career.

73 Consultation Question 65:

No

Please provide your views below:

I am appalled by this suggestion. I have two daughters aged 19 and 21.

The thought of either of them becoming surrogate mothers at their age is heartbreaking. No way are either of them mature enough to make a decision like this.

They certainly wouldn't want their beautiful healthy slim bodies ruined by pregnancy and childbirth. How could anyone who has not previously had a child, which I would expect to be the case for an 18 year old, have any idea what they are undertaking.

At age 18 a young woman should be in education, training or starting out on a career. A proper career that is. Not a career as a brood mare.

I don't believe any young woman would choose this unless they were being coerced, either by a controlling relative or a boyfriend.

Furthermore I ask, would any intended parent, who is investing so much in acquiring the baby they so want, would they want that baby to be a surrogate mother at age 18? If not, why not? And why would it be good enough for another 18 year old but not for their 18 year old daughter?

To be brutally honest, if a person is prepared to buy a year until woman, her health, use of her womb, her child, it is questionable if such a person is a fit and proper person to be a parent.

No

Please provide your views below:

As above.

A disgraceful suggestion.

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Not Answered

Please provide your views below:

Please provide your views below:

75 Consultation Question 67:

Not Answered

Please provide your views below:

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Not Answered

Please provide your views below:

77 Consultation Question 69:

Not Answered

Please provide your views below:

Please provide your views below:

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

No

Please provide your views below:

No woman should be treated like a brood mare, breeding baby after baby.

It is harmful to their health. I am shocked and disgusted that there should be a suggestion of no limit on the number of surrogate pregnancies a woman can undertake. Even the Ukraine has imposed a limit of three.

Being a surrogate mother can never be a career.

Any commissioning parents who are so uncaring of a surrogate mother's health that they are prepared to use them again and again and pay no regard to their health should definitely not be a parent.

Women deserve protection. Standards should be set in law. No limit is no standard.

Contraception was developed for a reason, and that reason was that it was widely accepted that it isn't good for maternal health to have repeated pregnancies.

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

Not Answered

Please provide your views below:

81 Consultation Question 73:

Please provide your views below:

82 Consultation Question 74:

Please provide your views below:

83 Consultation Question 75:

Please provide your views below:

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

85 Consultation Question 77:

Please provide your views below:

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

Please provide your views below:

I am not a woman. But all the conditions listed are very unpleasant at best, devastating and with lifelong health consequences at worst.

Are you proposing a list of tariffs? Who decided how bad a perineal tear was? If it causes painful intercourse subsequently does that merit a higher tariff?

That list amply illustrates why it is wrong to ask a woman to go through pregnancy and childbirth for another person.

Please provide your views below:

Not Answered

Please provide your views below:

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

This is a terrible question. What price a woman's life?

If my wife, the love of my life, my life partner were to die there is no amount of money that could compensate for her loss. Add in the loss of a mother to young children.

Still, there are real financial costs should ones wife/partner die. The financial contribution she might make through working, contributing to the family finances and accruing pension over the years. The cost of replacing her labour - the child care, cleaning, house keeping, cooking - that can be costed out and I have seen this done in court cases before. It is a lot of money.

As a point of interest, you suggest life insurance for the surrogate mother.

Are you aware that surrogate pregnancies carry substantially more risk than normally conceived pregnancies?

This study suggests the risk of developing hypertensive disorders in pregnancy is significantly higher in donor oocyte pregnancies than in pregnancies with an autologous ova. 35% for donor eggs, against 17% for autologous oocyte with a rate a bit less than 8% for normally conceived pregnancies. I wonder what price insurance companies will out on these high risk pregnancies?

It is entirely wrong to out a woman at risk and this represents a very great risk of a range of dangerous disorders, they are exposed to higher risks of many maternal complications including death.

<https://obgyn.onlinelibrary.wiley.com/doi/full/10.1111/1471-0528.13910>

89 Consultation Question 81:

Please provide your views below:

90 Consultation Question 82:

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

Please provide your views below:

Commercial surrogacy is offensive. No one should be allowed to pay a woman for use of her womb.

Not Answered

Please provide your views below:

Please provide any views below:

I believe if paid surrogacy is to be allowed the. Any husband or partner also needs to be paid. Who will be supporting the woman through her pregnancy? If she is hospitalised who will take time off work to care for existing children in the family.

If she is unwell who will look after her, cook her food, drive her to hospital? Any husband or partner is by default supporting the pregnancy and should also be paid.

91 Consultation Question 83:

Please provide views below:

Not Answered

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Not Answered

Please provide your views below:

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

95 Consultation Question 87:

Please provide your views below:

96 Consultation Question 88:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

You have not given any consideration to the husband or partner of any surrogate.

Whilst I do not believe a woman should obey her husband and I do believe major decisions should be made as a pair, it may be that some women will agree to be a surrogate against her husband's wishes. I believe this would be likely to precipitate a divorce. In which case I suggest the intended father (especially if his sperm have fertilised the egg for the baby his wife is carrying) should be able to cite the Intended father as a co-respondent in a divorce case. And sue for the loss of amenity his wife provides, companionship, a sexual partner, housekeeper, mother to existing children and more.

This may yet happen and case law be established.

Short Form Questionnaire: Law Commissions' Surrogacy Consultation



Law

Commission

Reforming the law



Scottish Law Commission

promoting law reform

This form is an extract of the longer form for comments and responses to the Law Commission's and the Scottish Law Commission's consultation about reforming surrogacy law. If you would like to respond to the full version of our consultation questionnaire, please use the online form: <https://consult.justice.gov.uk/law-commission/surrogacy>. Please see our websites for further details, and for links to download the full consultation paper: <https://www.lawcom.gov.uk/project/surrogacy/> and <https://www.scotlawcom.gov.uk/law-reform/law-reform-projects/joint-projects/surrogacy/>.

We have selected 46 questions which may be of particular interest of **those with lived experience of surrogacy arrangements**: surrogates, intended parents, family members and adult children born of surrogacy arrangements. You do not need to answer all the questions if you do not want to, and you can write as much or as little as you would like in response to our questions.

Please note that we may publish or disclose information you provide us in response to this consultation, including personal information. We ask consultees, when providing their responses, if they could avoid including personal identifying information in the text of their response, particularly where this may reveal the identities of other people involved in their surrogacy arrangement.

For more information about how we consult and how we may use responses to the consultation, please see [page i – ii of the Consultation Paper](#).

HOW TO SUBMIT YOUR RESPONSE USING THIS QUESTIONNAIRE

Type your response into the text fields below and then save your completed form. When you have completed your response, email the completed form as an attachment to surrogacy@lawcommission.gov.uk.

The closing date for submitting a response to our consultation is 11 October 2019.

QUESTIONS ABOUT YOU

What is your name? [REDACTED]

If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation? n/a

Are you responding to this consultation in a personal capacity or on behalf of your organisation?
Personal

If responding to this consultation in a personal capacity, which term below best describes you?
Surrogate

What is your email address?
[REDACTED]

What is your telephone number?
Click or tap here to enter text.

If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our [privacy notice](#), we take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.
Click or tap here to enter text.

Question No.	Consultation Question
Q1	Consultation Question 7. In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have: (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth, (2) complied with procedural safeguards for the agreement, and (3) met eligibility requirements, on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object. Do consultees agree?
Your Response to Q1	Absolutely agree the IPs should be the child's legal parents from birth. The surrogate should not have any right to object if a surrogacy agreement was signed before conception – this is not and never has been her baby. If there are any doubts or concerns on her part then the arrangement should not go ahead and treatment should not begin in the first place.
Q2	Consultation Question 11.

	We provisionally propose that: (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child; (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and (3) the defined period should be the applicable period for birth registration less one week. Do consultees agree?
Your Response to Q2	No. A fully informed and consulted surrogate who has developed a relationship with her IPS should not have the right to change her mind. This is not and never has been her baby.
Q3	Consultation Question 12. We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that: (1) the surrogate will be the legal parent of the child; (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood. Do consultees agree?
Your Response to Q3	See earlier response.
Q4	Consultation Question 15. We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child. Do consultees agree? We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

Your Response to Q4	Surrogate right to object shouldn't arise. The legal parents of the baby are the IPs.
Q5	Consultation Question 27. We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway: (1) the intended parents should acquire parental responsibility on the birth of the child; and (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order. Do consultees agree?
Your Response to Q5	Click or tap here to enter text.
Q6	Consultation Question 28. We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?
Your Response to Q6	Surrogate should not have parental responsibility at any point after the baby is born.
Q7	Consultation Question 29. For all surrogacy arrangements, we invite consultees' views as to: (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.
Your Response to Q7	Surrogate should not have parental responsibility at any point after the baby is born.
Q8	Consultation Question 55. We provisionally propose that: (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

	(2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances: (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or (b) following a determination by the court that the child should live with the intended parents; and (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007. Do consultees agree?
Your Response to Q8	Click or tap here to enter text.
Q9	Consultation Question 30. We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?
Your Response to Q9	Yes
Q10	Consultation Question 32. We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway. We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.
Your Response to Q10	All types of surrogacy arrangements (agency, independent, traditional, gestational) should have a surrogacy agreement and details entered on the register. NB Can it be called a 'record' instead of a 'register'? So many other 'registers' have hugely negative connotations.
Q11	Consultation Question 67. We provisionally propose that, as a condition of being eligible for entry into the new pathway: (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

	Do consultees agree?
Your Response to Q11	Counselling is really important. Everyone should have counselling, and the best way to achieve this is probably by making it mandatory. But the costs involved in this should be regulated too so people don't get priced out of surrogacy by counsellors over charging for support because it's compulsory.
Q12	Consultation Question 68. We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?
Your Response to Q12	Not a requirement – some people just can't afford this. But a strong recommendations, and freely available guidance on the issues which every surrogacy arrangement should cover.
Q13	Consultation Question 88. We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate. Do consultees agree? We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle. Do consultees agree?
Your Response to Q13	Financial agreement should be between the surrogate and IPs. If they choose to include them in a legally binding agreement, this should be available as an option. If on a goodwill basis the surrogate should be able to choose what to decide about lifestyle factors.
Q14	Consultation Question 42. We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?
Your Response to Q14	No – advertising should stay banned.
Q15	Consultation Question 62. We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity: (1) for cases under the new pathway to parenthood; and/or

	(2) for cases where a post-birth parental order application is made. We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.
Your Response to Q15	No.
Q16	Consultation Question 70. We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.
Your Response to Q16	Yes.
Q17	Consultation Question 33. We provisionally propose that: (1) there should be regulated surrogacy organisations; (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation. Do consultees agree?
Your Response to Q17	Yes
Q18	Consultation Question 35. We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?
Your Response to Q18	Yes – in my view it's ethically essential that surrogacy organisations remain non-profit.
Q19	Consultation Question 37. We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree? We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Your Response to Q19	Yes. If a regulation system is created, all surrogacy agencies should be required to be regulated.
Q20	Consultation Question 59. We provisionally propose that the new pathway – (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility. Do consultees agree? We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements. We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements. Do consultees agree?
Your Response to Q20	Yes
Q21	Consultation Question 46. We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?
Your Response to Q21	Yes, with counselling available beforehand.
Q22	Consultation Question 47. We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors. Do consultees agree? We provisionally propose that: (1) the register should be maintained by the Authority; (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has

	contributed gametes for the conception of the child has been medically verified, and that the information should include: (a) identifying information about all the parties to the surrogacy arrangement, and (b) non-identifying information about those who have contributed gametes to the conception of the child; and (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies. Do consultees agree?
Your Response to Q22	Yes. But please don't call it a 'register'. Perhaps a 'record' or other less negative word. Some existing 'registers' are for criminals and that's a really unhelpful association.
Q23	Consultation Question 48. We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.
Your Response to Q23	Not with no other info – what have height and weight got to do with anything? Better to include a personal statement from surrogate and IPs to the child than meaningless info about what job they did, which only leaves the child guessing more.
Q24	Consultation Question 49. We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request. Do consultees agree? We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances: (1) where his or her legal parents have consented; (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or (3) in any other circumstances.
Your Response to Q24	Agree, subject to counselling being available. IP consent should not be a factor. See earlier comments about the inappropriateness of the word 'register'
Q25	Consultation Question 51.

	We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so. Do consultees agree? We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.
Your Response to Q25	Yes if there is a genetic connection. No if not.
Q26	Consultation Question 52. We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so: (1) if they are genetically related through the surrogate; and/or (2) if they are not genetically related through the surrogate.
Your Response to Q26	Yes if there is a genetic connection. No if not. But in the pre-conception counselling and surrogacy agreement process the issue of what the future relationship between the surrogate's children and the baby born through surrogacy should be considered.
Q27	Consultation Question 53. For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.
Your Response to Q27	Yes
Q28	Consultation Question 72. We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be: (1) based on an allowance; (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or (3) based on costs actually incurred by the surrogate, and only on production of receipts.
Your Response to Q28	There should be no requirement for receipts – if you don't trust your surrogate to ask for the right amounts how can you trust her to nurture your baby for nine months? Expenses should fall into two parts. A 'basic' expenses amount to cover what every pregnancy is likely to involve (e.g. maternity clothes, prenatal vitamins, a recognition of pain and inconvenience). And an 'additional' expenses amount based on

	circumstances specific to the surrogate and IPs which are agreed on a case by case basis. All this should be agreed before conception and detailed in the surrogacy agreement.
Q29	Consultation Question 73. We invite consultees' views as to: (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and (2) the types of expenditure which should be considered "essential".
Your Response to Q29	Essential/'basic' expenses fixed payment should cover the following (i.e. once basic payment is made, surrogate received no further payments for the following): • Travel and subsistence costs for travel to fertility clinic for up to 3 visits, if clinic is within 30 miles of the surrogate's home • Loss of earnings or annual leave for up to three appointments • Childcare costs for up to three days clinic appointments • Costs associated with routine antenatal appointments • Pregnancy related leisure activities • Loss of earnings/annual leave for attending routine antenatal appointments • Childcare costs for routine antenatal appointments and up to two days for labour/birth • Travel costs for labour/birth • Maternity clothes • Prenatal vitamins • Home pregnancy tests • Costs associated with phone/internet contact with IPs • Family entertainment costs during/post pregnancy • Pregnancy related leisure and wellbeing activities (swimming, yoga etc.) • Non-prescription healthcare/personal products (feminine hygiene products, skincare) • Pain and inconvenience • Anything agreed in advance between surrogate and IPs BUT all this should be guidance and not rules! Building a trusting relationship and signing off agreed arrangements are the most important factors. Not following the rules. So give as much supportive guidance as possible and then let the IPs and surrogate (and regulated agency) make the arrangements that best suit them. Every situation is unique.

Q30	Consultation Question 74. We invite consultees' views as to: (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and (2) the types of expenditure which should be considered additional, rather than essential.
Your Response to Q30	Yes – anything agreed in advance between surrogate and IPs. Suggested guidance could indicate the types of thing this could cover to aid discussion. But what is agreed should be totally up to the parties involved without restriction.
Q31	Consultation Question 75. We invite consultees' views as to: (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and (2) the types of cost which should be included within this category.
Your Response to Q31	Yes – e.g. legal advice, fertility treatment and medication, life insurance, new wills, counselling costs, costs of drawing up surrogacy agreement, any charges relating to registering the surrogacy on the new 'register'.
Q32	Consultation Question 76. We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).
Your Response to Q32	Yes – if both parties agree the details in writing before conception.
Q33	Consultation Question 77. We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings: (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or (2) other lost potential earnings (as defined in paragraph 15.36 above).
Your Response to Q33	Yes – anything all parties sign up to, without restriction.
Q34	Consultation Question 78.

	We invite consultees to share their experiences: (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.
Your Response to Q34	Click or tap here to enter text.
Q35	Consultation Question 79. We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following: (1) pain and inconvenience arising from the pregnancy and childbirth; (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy. We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation. We invite consultees' views as to whether the level of compensation payable should be: (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or (2) left to the parties to negotiate.
Your Response to Q35	Dislike the word 'compensation' – 'recognition' is better. The less surrogacy is treated as transactional, and the more it's considered relational, focussed on discussion and agreement, the better. Pain and inconvenience should form part of the basic expenses. All fertility treatment costs should be covered by the IPs. No 'compensation' should be paid for complications like those listed in (3). These should be an accepted risk of surrogacy, as with any mindfully entered pregnancy. I am willingly taking a risk in getting pregnant on behalf of my IPs. I fully accept that risk. I would never want to or expect them to have any responsibility for adverse outcomes which I fully understand could arise.
Q36	Consultation Question 80.

	We invite consultees views' as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.
Your Response to Q36	Yes – life insurance should be covered by the IPs from the beginning of trying to conceive until a date agreed between surrogate and IPs and agreed in writing (e.g. one year after birth, or x months after ending treatment if unsuccessful). No cash should be expected if the surrogate dies as a result of a surrogate pregnancy – this should all be covered through a life assurance arrangement paid for by IPs and agreed in writing up front.
Q37	Consultation Question 81. We invite consultees' views as to whether: (1) intended parents should be able to buy gifts for the surrogate; and (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.
Your Response to Q37	Yes, and fine to specify these must be reasonable. But don't try and over control this. If the surrogate and IPs are happy to exchange gifts, that's part of relationship building and tying to control it too much inhibits the positive relational aspects of gifts.
Q38	Consultation Question 82. We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be: (1) any sum agreed between the parties to the surrogacy; or (2) a fixed fee set by the regulator. We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee: (1) no other payments; (2) essential costs relating to the pregnancy; (3) additional costs relating to the pregnancy; (4) lost earnings; (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or (6) gifts.

Your Response to Q38	Absolutely yes to payments – see earlier responses. And definitely leave this up to IPs and surrogate to agree. Don't restrict, these will be so personal to each relationship. Guidance to help the conversations happen is helpful, but not imposing constraints which inhibit the relationship. As long as all expenses are agreed in writing before trying to get pregnant, the details should be left to the IPs and surrogate and their unique circumstances.
Q39	Consultation Question 84. We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?
Your Response to Q39	Yes
Q40	Consultation Question 85. We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.
Your Response to Q40	Anything they all agree on in writing.
Q41	Consultation Question 92. We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?
Your Response to Q41	Yes
Q42	Consultation Question 94. We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth. Do consultees agree? We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules. Do consultees agree? We provisionally propose that:

	(1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate. Do consultees agree? We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.
Your Response to Q42	Click or tap here to enter text.
Q43	Consultation Question 95. We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?
Your Response to Q43	Click or tap here to enter text.
Q44	Consultation Question 97. We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?
Your Response to Q44	Yes
Q45	Consultation Question 99. We provisionally propose that: the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

	Do consultees agree?
Your Response to Q45	Click or tap here to enter text.
Q46	Consultation Question 107. We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area. We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales. We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.
Your Response to Q46	Expectation that surrogacy requires its own care pathway in every setting where healthcare professionals will come across it. GPs, midwives and hospitals all need to be aware of this increasingly common path to parenthood and how to manage it effectively and appropriately. E.g. IPs are the parents, not the surrogate, they should be allowed to stay with the baby at all times in their own space. More people will be present at the birth in a surrogacy arrangement than the surrogate's partner – it should be expected that a surrogate may want support from her partner, and a doula, and the IPs should be able to be present too. So glad to see the DHSC has published guidance. This should be warmly welcomed, and views of surrogates, IPs and other interested parties regularly invited to make it even better as more surrogacy journeys take place.

END OF QUESTIONNAIRE – HOW TO SUBMIT

Thank you for completing this form. To submit it as a formal response to the Law Commission, save your completed form and email it as an attachment to surrogacy@lawcommission.gov.uk. Please note that the deadline for responding to our consultation is **11 October 2019**.

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 22:15:39

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Medical practitioner or counsellor

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

I believe all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court. There are many stages in an international surrogacy arrangement where children and women could be exploited and abused. There appears to be a significant risk of children being sold as commodities and I believe this goes against most Human Rights Legislation.

Please provide your views below:

There certainly needs to be a high level of legal scrutiny on international surrogacy arrangements so a circuit judge could be also be used in these cases.

9 Consultation Question 2:

Please provide your views below:

I am concerned that domestic surrogacy cases also contain significant potential for exploitation of women and children. Therefore, I think these cases should be heard by circuit judges or High Court judges.

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

No

Please provide your views below:

I believe that child's best interests should be paramount. These are only likely to be known once the child is born. There should be no automatic transfer of parental responsibility as the birth mother should retain rights towards her child. I understand that there is a document from the UN, the UN Special Rapporteur, that recommends that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority after the birth, as I suggested above.

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Yes

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

No

Please provide your views below:

I completely disagree with this suggestion. I do not believe that this could ever be in the best interests of the child. The baby has been grown inside his/her mother for 9 months, sharing a blood supply, and the baby will recognise their mother's voice and smell. There seems to be no way that this baby at birth will recognise any other person as their mother. The pair may have bonded during the pregnancy and this bond may remain following birth. I feel it is unethical to support a system whereby a woman can purposefully become pregnant but have no responsibility for the resulting child. This certainly treats the baby as a commodity to be bought or sold and I believe that the buying or selling of human beings is wrong.

I understand that the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993 is relevant here. This requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. A lot can happen during a pregnancy, as described above, but also new information may come to light about the prospective parents and it should always be the mother's choice of whether she wants to give up her baby.

The system is so open to exploitation of vulnerable women, desperate for money, or who could be coerced by abusive male partners to carry babies for money. They may not know how they will feel about the baby once it is born and should not be subject to a decision made under coercion in pregnancy. placing the emphasis on mothers to appeal the decision is unrealistic. Even following a relatively straightforward labour, the ongoing physical and emotional fatigue could make it difficult to mount such an appeal. Mothers really do lose some executive functioning during pregnancy and during the first year of their infant's life due to increased activity in bonding centres of the brain that submitting an appeal may be difficult. This is commonly known as "baby brain" but can impact on memory and organisation.

15 Consultation Question 8:

Other

Please provide your views below:

I do not agree with the new pathway, for some of the reasons described above.

Not Answered

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

I disagree with the "new pathway"

I do not think this consultation has been very well designed as there is no evidence that any assessment of impact of any of these changes.

18 Consultation Question 11:

No

Please provide your views below:

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. placing the emphasis on mothers to appeal the decision is unrealistic. Even following a relatively straightforward labour, the ongoing physical and emotional fatigue could make it difficult to mount such an appeal. Mothers really do lose some executive functioning during pregnancy and during the first year of their infant's life due to increased activity in bonding centres of the brain that submitting an appeal may be difficult. This is commonly known as "baby brain" but can impact on memory and organisation.

As a perinatal psychiatrist I am very aware of the emotional changes affecting new mothers after delivery. One in 5 will experience post natal depression, one in 1000 will suffer postpartum psychosis, making them incapable of making such an important decision.

After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

19 Consultation Question 12:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.* This seems to me the only way to safeguard the best interests of the child and to prevent exploitation of vulnerable women. The wording of this document dehumanises these babies, but they are individuals who require care and attachments, none of which are safeguarded by removing legal rights from women.

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After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of lodging an appeal in writing.

20 Consultation Question 13:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.* This seems to me the only way to safeguard the best interests of the child and to prevent exploitation of vulnerable women. The wording of this document dehumanises these babies, but they are individuals who require care and attachments, none of which are safeguarded by removing legal rights from women.

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As a perinatal psychiatrist I am very aware of the emotional changes affecting new mothers after delivery. One in 5 will experience post natal depression, one in 1000 will suffer postpartum psychosis, making them incapable of making such an important decision.

After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of lodging an appeal in writing.

21 Consultation Question 14:

No

Please provide your views below:

I profoundly disagree with this proposal.

As a perinatal psychiatrist I work closely with social workers and other health professionals engaged in child protection. These suggestions seem to go against established safeguarding procedures.

I have spoken about the UN Special Rapporteur's recommendation before, but this document recommends that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court of other competent authority after the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. From professional experience I am aware that when there is a concern about parenting ability, the assessment of prospective parents starts during pregnancy (if possible), and continues once the child is born. The notion that an assessment prior the child's birth is adequate can never be in the best interests of the child and leaves the child vulnerable to abuse. I know of couples who have adopted, which is similar to surrogacy in that they are not the birth parents, and their parenting assessments are comprehensive and ongoing. There has been a case of a couple that adopted a baby where the baby was physically abused and died, even with social care monitoring, to the notion of removing all safeguards is very concerning.

A pre-conception assessment will be nearly a year old, at least, once the baby is born and a lot can change in a year - within the couple's relationship or family or social circumstances.

It seems to be proposed that a welfare assessment is not necessary as parents of children born naturally do not have such checks. However, birth parents have the pregnancy to prepare for parenthood. Mothers, especially, are programmed to recognise and nurture their infant and the infant is programmed to seek attachment from them. this will make the development of relationship much easier. "intended parents" do not have this advantage so will make parenting more difficult.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

22 Consultation Question 15:

No

Please provide your views below:

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

It is a recognised pattern of abuse that men use to keep their partners pregnant, or to cause their partners to bear multiple children to make it more difficult for their partners to leave. If the partners were able to use these pregnancies and sell the offspring, with no parental responsibility, it greatly increases the risk of exploitation of women.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

Yes

Please share your views below:

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

23 Consultation Question 16:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn. During pregnancy, a woman shares her blood supply, her emotional and physical energy with her baby. A still birth is a tragedy, and the mother has lost a part of her self. To not recognise the mother as a parent is at worst an insult to all her investment in the baby and at worst may have serious implications for her recovery from grief and risk of mental illness.

No

Please provide your views below:

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

Not Answered

Please provide your views below:

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'

26 Consultation Question 19:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

Please provide your views below:

27 Consultation Question 20:

Yes

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.

29 Consultation Question 22:

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

30 Consultation Question 23:

Please provide your views below:

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

31 Consultation Question 24:

Please provide your views below:

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved.

I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

33 Consultation Question 26:

No

Please provide your views below:

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

17

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children. Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

34 Consultation Question 27:

Not Answered

Please provide your views below:

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Not Answered

Please provide your views below:

36 Consultation Question 29:

Please provide your views below:

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Not Answered

Please provide your views below:

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

39 Consultation Question 32:

Please provide your views below:

Please provide your views below:

40 Consultation Question 33:

No

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Other

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Other

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

41 Consultation Question 34:

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Other

Please provide your views below:

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.). It is hard to imagine how a "non-profit" organisation could prove to be so, with the increasing number of staff involved, e.g solicitors and lawyers - who work for profit making agencies. Much IVF will be done for profit - I do not think the NHS should finance surrogacy as it is not a medical condition and it is rationed for couples with medical conditions. The organisations will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

I also fail to see any difference between this and non-profit agencies being set up to allow people to sell a kidney or other body parts. Or taken to an extreme, why not "non-profit" organisations to arrange the sale of children or adults.

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence. It is too closely linked to selling of women to be compatible with human rights principles.

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Other

Please provide your views below:

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Yes

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child.
It is disgusting that women's bodies are being considered as nothing more than commodities to be bought, and once profits can be made, open to exploitation. I believe surrogacy to be exploitative of women, admittedly in not all cases, but these exceptions should not be allowed to put significant amounts of women at risk.

The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy.

Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

At worst, maternal mortality is not zero in this country, or anywhere in the world, they are putting their lives in danger. The risks in pregnancies using egg donations are significantly increased, for many measures, but most concerning is increased pre-eclampsia. Pregnancy can have a significant effect on subsequent fertility, what if there is an emergency delivery, leaving a woman unable to have children of her own - what cost could you place on that? It will not be wealthy women that volunteer as surrogates, it will be vulnerable, impoverished women.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

55 Consultation Question 47:

Yes

Please provide your views below:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his parentage.

57 Consultation Question 49:

Yes

Please provide your views below:

Please provide your views below:

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

yes this should be possible. these people are siblings they share a mother

59 Consultation Question 51:

Yes

Please provide your views below:

Please provide your views below:

yes, I agree. These people share a mother, they are siblings. They will have shared a similar uterine environment and as such may have shared characteristics. Science is showing more and more influence of uterine environment on the development of personality so it is likely these people will have a connection.

60 Consultation Question 52:

Please provide your views below:

Yes - as above, they share a mother so are siblings.

They will have shared a similar uterine environment and as such may have shared characteristics. Science is showing more and more influence of uterine environment on the development of personality so it is likely these people will have a connection.

Please provide your views below:

yes.

They will have shared a similar uterine environment and as such may have shared characteristics. Science is showing more and more influence of uterine environment on the development of personality so it is likely these people will have a connection.

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

no

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

63 Consultation Question 55:

No

Please provide your views below:

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs.

An adoption order can be considered as an option when a parental order is not possible.

No

Please provide your views below:

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

Please provide your views below:

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

My understanding is that countries such as India had significant problems with surrogacy tourism, leading to commercial surrogacy being banned in this country. The United Kingdom must not be a site for surrogacy tourism due to the enormous risks of exploitation of women and children.

65 Consultation Question 57:

Please provide your views below:

The qualifying categories of relationship should not be reformed or removed.

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Other

Please provide views below:

I do not agree with the proposed new pathway

67 Consultation Question 59:

No

Please provide views below:

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained.

I dispute that surrogacy is ever a 'medical necessity.' There is no medical condition to be treated here. If both parties in a relationship are infertile, then

the couple can look to adoption or fostering, the exploitation of other women's bodies should not be used. I would argue that requiring a kidney transplant is a medical necessity, but people are not allowed to buy kidneys.

Please provide views below:

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

Yes

Please provide views below:

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

No

Please provide your views below:

surrogacy is not a medical necessity. there is not a medical condition to be treated here. Being unable to bear a child does not shorten your life. the psychological impact of such should be treated by psychological means rather than risking other people's fertility and lives.

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

No

Please provide views below:

Surrogacy is not a medical necessity. there is not a medical condition to be treated here. Being unable to bear a child does not shorten your life. the psychological impact of such should be treated by psychological means rather than risking other people's fertility and lives.

70 Consultation Question 62:

Please provide your views below:

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned.

I dispute that surrogacy is ever a 'medical necessity.' there is not a medical condition to be treated here. Being unable to bear a child does not shorten your life. the psychological impact of such should be treated by psychological means rather than risking other people's fertility and lives.

Please provide your views below:

Surrogacy is never a medical necessity. there is not a medical condition to be treated here. Being unable to bear a child does not shorten your life. the psychological impact of such should be treated by psychological means rather than risking other people's fertility and lives.

71 Consultation Question 63:

Other

Please provide your views below:

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother

Please provide your views below:

Not Answered

Please provide your views below:

72 Consultation Question 64:

No

Please provide your views below:

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good

health until the child reaches adulthood.

Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will. Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate. This corresponds to an increasing evidence base that brain development continues to increase rapidly up to age 24. Some mental health services now include adolescents up to age 24 due to the non maturation of the brain until this age.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

73 Consultation Question 65:

Not Answered

Please provide your views below:

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate. This corresponds to an increasing evidence base that brain development continues to increase rapidly up to age 24. Some mental health services now include adolescents up to age 24 due to the non maturation of the brain until this age.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Other

Please provide your views below:

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate. This corresponds to an increasing evidence base that brain development continues to increase rapidly up to age 24. Some mental health services now include adolescents up to age 24 due to the non maturation of the brain until this age.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

Not Answered

Please provide your views below:

81 Consultation Question 73:

Please provide your views below:

82 Consultation Question 74:

Please provide your views below:

83 Consultation Question 75:

Please provide your views below:

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

85 Consultation Question 77:

Please provide your views below:

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

pain and inconvenience arising from the pregnancy and childbirth; medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or, specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

Please provide your views below:

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I am a perinatal psychiatrist so very shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. When I was pregnant, psychiatric morbidity was a significant concern. One of the characteristics of perinatal mental illness is that there is often no family or personal history of mental illness and conditions can arise "out of the blue" triggered only by pregnancy or childbirth. These conditions do have a significant mortality.

I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

Please provide your views below:

Not Answered

Please provide your views below:

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

89 Consultation Question 81:

Please provide your views below:

90 Consultation Question 82:

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

Please provide your views below:

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'

Not Answered

Please provide your views below:

Please provide any views below:

91 Consultation Question 83:

Please provide views below:

Not Answered

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Not Answered

Please provide your views below:

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

95 Consultation Question 87:

Please provide your views below:

96 Consultation Question 88:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Not Answered

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become

more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the ‘intended parents’ are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks.

As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has longterm negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

There are no robust longterm studies on the psychological effects on an individual of being removed from their birth mother. We know that babies seek out their mothers, they are comforted by her smell and her voice. Babies are programmed to seek out their mothers for comfort - denying babies of this comfort is instinctively cruel. The dairy industry has been criticised for removing calves from their mothers at a young age, and these proposals suggest removing human babies from their mothers. The long term effects of this could be devastating. It may not, but there is no evidence for this, and so this new pathway is an unethical experiment on these new babies. I wonder if there would be scope for them to sue their intended parents for psychological damage from removal from their mother - or a class action against the proposed surrogacy organisations for promoting this option with no consideration for the mental health of offspring. The babies are treated as objects and not individuals with their own unique needs.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of ‘attractiveness’ for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

Please provide your views below:

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the ‘intended parents’ have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

Please provide your views below:

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

63
arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

NA

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- **This is a personal response**
- This is a response on behalf of an organisation
- Other

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Surrogate
- Intended parent
- Person born of a surrogacy arrangement
- Family member of a surrogate
- Family member of an intended parent
- Legal practitioner
- Medical practitioner or counsellor
- Social worker
- Academic
- **Other individual**

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

-

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

(1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and

(2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration.

Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,

- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

- 1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;

- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in

surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or

parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Paragraph 8.77

Consultation Question 17.

1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

- 1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

- 1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:
- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
 - (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

- 1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogacy arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

I found the consultation quite complex and, as noted in the responses, heavily weighted towards a pre-defined conclusion. I've therefore used a template response which articulates well my own concerns about this proposed change in the law. I would personally urge lawmakers to seriously consider my response alongside other women's concerns about what is in effect a move to turn our bodies into saleable commodities, an option for use should we find ourselves in poverty. I think this can never be acceptable in a society that intends to view women as human beings and equal to men.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties

such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 18.22

Response ID ANON-2V7F-Y8ZS-3

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 22:23:16

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Other individual

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

Please provide your views below:

I'm concerned that someone with sufficient experience presides since there is potential for abuse and coercive control and human trafficking

9 Consultation Question 2:

Please provide your views below:

should be a senior judge to protect rights of birth mother and child

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

No

Please provide your views below:

I don't think parental rights should be acquired by a child living in a house with someone

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Yes

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

no.

the birth mother must be legal parent until after the birth when her complete and free consent to giving up parental rights is sought. there should be no suggestion that a child can be bought or sold or that "intended" parents have rights before the birth of a child .

the rights of the child must be considered before the rights of the "intended" parents

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

No

Please provide your views below:

parental rights of intended parents should not begin before birth .

there should be no children conceived for money

15 Consultation Question 8:

Other

Please provide your views below:

surrogacy should not be encouraged

Not Answered

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Other

Please provide your views below:

there should be no normalisation of surrogacy

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

there should be no normalisation of surrogacy

18 Consultation Question 11:

No

Please provide your views below:

the birth mother should be the legal parent until and if her consent for giving up parental rights is freely given.

in any case the child's welfare should be taken into consideration

19 Consultation Question 12:

Other

Please provide your views below:

there is only a short window of opportunity to register a child at present

the birth mother should be the sole legal parent until a court decides the final outcome of parental rights

20 Consultation Question 13:

Other

Please provide your views below:

the birth mother should be the sole legal parent until a court decides the final outcome of parental rights

there must be sufficient time after the birth for a woman to be recovered enough to know whether she wants to give up rights

21 Consultation Question 14:

No

Please provide your views below:

there must be a welfare check after the birth and before transferring rights, these circumstances are not normal and must therefore have clear legal boundaries regarding consent of mother and welfare of child.

22 Consultation Question 15:

No

Please provide your views below:

this would not be aligned with current law.

No

Please share your views below:

there should be no automatic acquiring of parental rights by intended parents.

mothers free consent and child welfare comes first

23 Consultation Question 16:

No

Please provide your views below:

birth mother should be legal parent, if child is stillborn, not intended parents

No

Please provide your views below:

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

No

Please provide your views below:

birth mother should be legal parent

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

I disagree with new pathway proposals

26 Consultation Question 19:

No

Please provide your views below:

birth mother must be legal.parent

Please provide your views below:

birth mother must be legal.parent until.she freely gives up rights
dead people shouldn't be able to acquire parental rights

27 Consultation Question 20:

Yes

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

fbirth mother must be legal.parent until.she freely gives up rights there should be.no 3 person parenthood. temporary or otherwise

29 Consultation Question 22:

Please provide your views below:

oversight should.be judicial

30 Consultation Question 23:

Please provide your views below:

31 Consultation Question 24:

Please provide your views below:

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

no. it should.not be amended

33 Consultation Question 26:

No

Please provide your views below:

birth mother must be legal.parent until.she freely gives up rights

34 Consultation Question 27:

No

Please provide your views below:

birth mother must be legal.parent until.she freely gives up rights

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.Do consultees agree?

Yes

Please provide your views below:

although I disagree with new pathway

36 Consultation Question 29:

Please provide your views below:

birth mother must be legal.parent until.she freely gives up rights

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.Do consultees agree?

No

Please provide your views below:

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

39 Consultation Question 32:

Please provide your views below:

I disagree with new pathway

Please provide your views below:

40 Consultation Question 33:

Yes

Please provide your views below:

if they have to exist they should be regulated. however surrogacy should not be normalised.

children should not be bought or sold

Other

Please provide your views below:

Yes

Please provide your views below:

41 Consultation Question 34:

representing the organisation to, and liaising with, the regulator;; managing the regulated surrogacy organisation with sufficient care, competence and skill;; ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;; training any staff, including that of the person responsible; and, providing data to the regulator and to such other person as required by law.

Please provide your views below:

Please provide your views below:

Please provide your views below:

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Yes

Please provide your views below:

children should not be bought and sold.

women should not be wombs for hire

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Other

Please provide your views below:

I disagree with new pathway

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Not Answered

Please provide your views below:

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Not Answered

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

no profit should be made from selling children or hiring wombs

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

surrogacy should not be normalised .

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Yes

Please provide your views below:

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

55 Consultation Question 47:

Other

Please provide your views below:

surrogacy should not be expanded and normalised

Not Answered

Please provide your views below:

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

a child should be able to know its parents.

57 Consultation Question 49:

Yes

Please provide your views below:

Please provide your views below:

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

59 Consultation Question 51:

Yes

Please provide your views below:

Please provide your views below:

60 Consultation Question 52:

Please provide your views below:

Please provide your views below:

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

63 Consultation Question 55:

Not Answered

Please provide your views below:

Yes

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

if mother has not given up rights then her spouse should have paternity leave/pay

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

No

Please provide your views below:

maternity allowance should be for birth mother

111 Consultation Question 103:

Please provide your views below:

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

should not in use intended parents before they have actual parental responsibility

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

birth mother must remain legal.parent until.she freely gives up rights

surrogacy should.not be encouraged and normlaised

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

[REDACTED]

Women Against Pornography

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

Personal Capacity

•

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

•

• Academic

• I

5. What is your email address?

Email address

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[REDACTED]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

We invite consultees' views as to whether, in England and Wales:

1. all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

2. if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

We invite consultees' views as to whether they are of the view that, in Scotland:

3. there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
4. it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
5. further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

6. entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,

7. complied with procedural safeguards for the agreement, and
8. met eligibility requirements,
on the birth of the child the intended parents should be the legal parents of the child,
subject to the surrogate's right to object.
Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

We provisionally propose that:

9. the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
10. this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
11. the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

12. the surrogate will be the legal parent of the child;
13. if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
14. the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Consultation Question 13.

We provisionally propose that, in the new pathway:

15. the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
16. if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
17. if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Consultation Question 14.

- 1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:
(15.1) should be assessed in the way set out in Chapter 8 of the current Code of

- Practice;
- (15.2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (15.3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

- 1.1 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

18. the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
19. the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a

declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Paragraph 8.77

Consultation Question 17.

We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

20. it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 1. for an order for appointment as guardian of the child, and
 2. for a parental order in the name of the intended parents, subject to the surrogate's consent; or
21. the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

22. the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
23. if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
24. if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a

brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

We invite consultees' views as to:

25. a temporary three-parent model of legal parenthood in surrogacy cases; and
26. how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

We invite consultees' views:

27. as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
28. if so, as to whether should this oversight be:
 1. administrative, or
 2. judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

In respect of England and Wales, we invite consultees' views as to:

29. whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
30. if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

In respect of England and Wales, we invite consultees' views:

31. as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
32. what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

33. the child is living with them or being cared for by them; and

34. they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

35. the intended parents should acquire parental responsibility on the birth of the child; and
36. if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the 'intended parents' should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women's reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

For all surrogacy arrangements, we invite consultees' views as to:

37. whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and
38. whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

We provisionally propose that:

39. there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

40. there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

41. each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.
Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

We provisionally propose that the person responsible must be responsible for:

- 42. representing the organisation to, and liaising with, the regulator;
- 43. managing the regulated surrogacy organisation with sufficient care, competence and skill;
- 44. ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- 45. training any staff, including that of the person responsible; and
- 46. providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services

for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women’s prostitution.

Paragraph 9.135

Consultation Question 42.

We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other ‘service’ organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a ‘surrogate’ mother would be a solution to an impoverished woman’s financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a ‘surrogate’ would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

We provisionally propose that:

47. the register should be maintained by the Authority;
48. the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 1. identifying information about all the parties to the surrogacy arrangement, and
 2. non-identifying information about those who have contributed gametes to the conception of the child; and
49. to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

50. where his or her legal parents have consented;

51. if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or

52. in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

53. if they are genetically related through the surrogate; and/or

54. if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

We provisionally propose that:

55. the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

56. the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:

1. where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
2. following a determination by the court that the child should live with the intended parents; and

57. the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

We invite consultees' views on whether:

- 58. the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- 59. the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

We provisionally propose that the new pathway –

- 60. should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- 61. that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Paragraph 12.64

Consultation Question 60.

We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

62. for cases under the new pathway to parenthood; and/or

63. for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

We invite consultees' views as to whether it should be a condition for an application for a parental order that:

64. those who contributed gametes are entered on the national register of surrogacy agreements; and/or

65. if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less

likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- 66. the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- 67. the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- 68. based on an allowance;
- 69. based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- 70. based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

We invite consultees' views as to:

- 71. whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- 72. the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual

essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

We invite consultees' views as to:

73. whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and

74. the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

We invite consultees' views as to:

75. whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and

76. the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.29

Consultation Question 76.

We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

77. her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or

78. other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

We invite consultees to share their experiences:

79. of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
80. where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

81. pain and inconvenience arising from the pregnancy and childbirth;
82. medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
83. specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed

to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

We invite consultees' views as to whether the level of compensation payable should be:

84. a fixed fee set by the regulator (operating as a cap on the maximum payable), or

85. left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

We invite consultees' views as to whether:

- 86.intended parents should be able to buy gifts for the surrogate; and
- 87.if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

88.any sum agreed between the parties to the surrogacy; or

89.a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

90.no other payments;

91.essential costs relating to the pregnancy;

92.additional costs relating to the pregnancy;

93.lost earnings;

94. compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or

95. gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

96. in the first trimester of pregnancy only;

97. to any miscarriage or termination; or
98. some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

99. for cases within the new pathway to parenthood; and

100. for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

We provisionally propose that:

the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

We invite consultees' views as to whether:

101. any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
102. if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

We invite consultees' views as to:

103. whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
104. if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions

and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the ‘intended parents’ are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman’s health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn’t in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of ‘attractiveness’ for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people’s thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself. There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

We invite consultees’ views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the ‘intended

parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

105. when the child was born;
106. whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
107. whether the arrangement led to the making of a parental order in the UK; and
108. whether they are a:
 1. opposite-sex couple;
 2. male same-sex couple;
 3. female same-sex couple;
 4. single woman; or
 5. single man.

N/A

Paragraph 18.2

Consultation Question 110.

We invite consultees who have experience of applying for a parental order in the UK to tell us:

109. whether the surrogacy arrangement was domestic or international;
110. whether they had legal advice before the making of the parental order;
111. whether they were represented by a lawyer in court; and
112. the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

113. medical screening; and
 114. implications counselling
- (where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- 115. to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and
- 116. to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

We invite consultees to tell us of the impact of:

- 117. the current requirement of a genetic link; and
- 118. any removal of this requirement in cases of medical necessity:
 - 1. in the new pathway;
 - 2. in the parental order route for domestic surrogacy arrangements; or
 - 3. in both situations.

Paragraph 18.11

Consultation Question 114.

We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- 119. their profession; and
- 120. what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- 121. if particular proposals will increase accessibility, and why; and
- 122. if particular proposals will restrict accessibility, and why.

N/A

We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- 123. if particular proposals will increase accessibility, and why; and
- 124. if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

We ask consultees who are intended parents to tell us:

125. whether the surrogacy arrangement was domestic or international;
126. what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
127. how they raised the funds for the surrogacy arrangement(s);
128. what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
129. how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have

an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should 'tear this fake consultation up' and redraft a real consultation wherein the stance is position of women's and children's fundamental human rights.

If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 22:29:22

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

Other

If other, please provide details:

Retired social worker and founder of Jigsaw (association of adoptees & natural mothers)

4 If responding to this consultation in a personal capacity, which term below best describes you?

Not Answered

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

No

Please provide your views below:

I believe surrogacy should be stopped because it is an abuse of women's and children's rights.

As the UN Special Rapporteur has recommended, to counter exploitation and commodification of children, it is essential that "the surrogate mother retains parentage and parental responsibility at birth."

15 Consultation Question 8:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Not Answered

Please provide your views below:

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

18 Consultation Question 11:

Not Answered

Please provide your views below:

19 Consultation Question 12:

Not Answered

Please provide your views below:

20 Consultation Question 13:

Not Answered

Please provide your views below:

21 Consultation Question 14:

Not Answered

Please provide your views below:

22 Consultation Question 15:

Not Answered

Please provide your views below:

Not Answered

Please share your views below:

23 Consultation Question 16:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

Not Answered

Please provide your views below:

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

26 Consultation Question 19:

Not Answered

Please provide your views below:

Please provide your views below:

27 Consultation Question 20:

Not Answered

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

29 Consultation Question 22:

Please provide your views below:

30 Consultation Question 23:

Please provide your views below:

31 Consultation Question 24:

Please provide your views below:

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

33 Consultation Question 26:

Not Answered

Please provide your views below:

34 Consultation Question 27:

Not Answered

Please provide your views below:

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Not Answered

Please provide your views below:

36 Consultation Question 29:

Please provide your views below:

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Not Answered

Please provide your views below:

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

39 Consultation Question 32:

Please provide your views below:

Please provide your views below:

40 Consultation Question 33:

No

Please provide your views below:

Allowing regulated surrogacy organisations would normalise surrogacy and increase its prevalence.

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

41 Consultation Question 34:

Please provide your views below:

Please provide your views below:

Please provide your views below:

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Not Answered

Please provide your views below:

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Not Answered

Please provide your views below:

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Other

Please provide your views below:

I disagree with the proposal for regulated surrogacy organisations as these would normalise surrogacy and increase its prevalence.

Surrogacy is not the same as egg and sperm donation. Blurring the difference creates an environment in which surrogacy becomes 'framed' as primarily a legal contractual transaction like any other, rather than the commodification of a woman's body and also of her child.

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Not Answered

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

Not Answered

Please provide your views below:

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

Allowing advertising of surrogacy would further normalise the commodification of women's bodies.

It would intensify the inequality that underpins all use of women's bodies by others, by promoting the idea that becoming a 'surrogate' mother might be the answer to an impoverished woman's financial problems and even her 'duty' if it would provide food, clothing and shelter for her family and children.

Indeed many of the same 'recruitment messages' could be utilised which for decades have 'persuaded' women and girls to sell their bodies for sex.

And for those who make a profit from the sale and use of women's bodies it has always proved to be a lucrative occupation.

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

I have no personal experience of surrogacy. But I do have personal experience of adoption. In 1975 I founded an organisation called Jigsaw (the National Association and Register of Adoptees and their Natural Mothers). This was instrumental in providing evidence to the Government in relation to Section 26 of the 1975 Children Act, which granted adoptees the right to obtain a copy of their original birth certificate at the age of 18.

What I didn't know at that time, but was soon to learn, was of the life-long trauma experienced by thousands of adults who had been adopted. Many had struggled for decades with feelings that they had been rejected and given away by their mother and found it hard to trust other people in later life, or to feel they could sustain a loving relationship with another person. These feelings were reported time and time again by adoptees who approached us for help and support, totally irrespective of whether the adoption had been 'successful' or not.

The second most pressing issue was one of identity. I cannot stress how important this was for them. What is quite straightforward for most of us can be a lifelong haunting question for an adopted person: "Who am I?". This can bring a profound sense of dislocation and a deeply-felt sense of not truly belonging anywhere or to anyone, and can relentlessly eat away within them despite in many (but not all) cases having loving adoptive parents, a happy marriage and often children of their own.

Being able to access their original birth certificate was enormously important to the adult adoptees who contacted us. Knowing who their mother was, whether or not they went on to seek contact with her, helped to heal their sense of dislocation and not belonging.

I am opposed to surrogacy. But if it takes place, I feel it is essential that the children of 'surrogate' mothers have the right to see their original birth certificates when they reach the age of 18. It is essential, too, that it is the mother's name, and not the names of the 'intended parents', that appear on that certificate.

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Other

Please provide your views below:

I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration.

The UN Special rapporteur has made it clear that there is "no right to a child under international law." No-one other than the actual mother should have the right to be included on a child's birth certificate.

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Not Answered

Please provide your views below:

55 Consultation Question 47:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

57 Consultation Question 49:

Not Answered

Please provide your views below:

Please provide your views below:

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

59 Consultation Question 51:

Not Answered

Please provide your views below:

Please provide your views below:

60 Consultation Question 52:

Please provide your views below:

Please provide your views below:

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

Not Answered

Please provide your views below:

Please provide your views below:

65 Consultation Question 57:

Please provide your views below:

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Not Answered

Please provide views below:

67 Consultation Question 59:

Not Answered

Please provide views below:

Please provide views below:

Not Answered

Please provide views below:

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

No

Please provide your views below:

No-one has a right to a child. There is no 'medical necessity' for surrogacy.

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

No

Please provide views below:

No-one has a right to a child. There is no 'medical necessity' for surrogacy.

70 Consultation Question 62:

Please provide your views below:

No-one has a right to a child. There is no 'medical necessity' for surrogacy.

Please provide your views below:

No-one has a right to a child. There is no 'medical necessity' for surrogacy.

71 Consultation Question 63:

Not Answered

Please provide your views below:

Please provide your views below:

Not Answered

Please provide your views below:

72 Consultation Question 64:

Not Answered

Please provide your views below:

Please provide your views below:

Not Answered

Please provide your views below:

73 Consultation Question 65:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Not Answered

Please provide your views below:

Please provide your views below:

75 Consultation Question 67:

Not Answered

Please provide your views below:

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Not Answered

Please provide your views below:

77 Consultation Question 69:

Not Answered

Please provide your views below:

Please provide your views below:

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

No

Please provide your views below:

The ethical, medical and psychological consequences of surrogacy are far greater than has so far been recognised.

The idea that not only should surrogacy be encouraged, but that there should be no upper limit on the number of surrogate pregnancies is particularly abhorrent and must not be allowed.

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

based on costs actually incurred by the surrogate, and only on production of receipts.

Please provide your views below:

Rich people paying poor women to bear children intensifies the exploitation that underlies all surrogacy arrangements.

Any payment over and above actual costs would be an incentive for poor women to enter, or be pressured into entering, a surrogacy agreement against their best interests.

Experience in India, where commercial surrogacy has been big business since 2002, is instructive. Brokers seek out destitute women, promising them a way to feed themselves and their children. They take a huge cut for themselves, and the women are incarcerated in 'baby factories', gated hostels where they are detained and monitored throughout their pregnancy.

Opposition to the exploitative consequences of commercial surrogacy, for poor women in particular, has been widespread. This has resulted, this year, in the Indian parliament introducing legislation to outlaw it.

We cannot allow commercial surrogacy to develop in the UK.

81 Consultation Question 73:

Please provide your views below:

82 Consultation Question 74:

Please provide your views below:

83 Consultation Question 75:

Please provide your views below:

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

85 Consultation Question 77:

Please provide your views below:

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

Please provide your views below:

Please provide your views below:

Not Answered

Please provide your views below:

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

89 Consultation Question 81:

Please provide your views below:

90 Consultation Question 82:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Please provide any views below:

91 Consultation Question 83:

Please provide views below:

Not Answered

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Not Answered

Please provide your views below:

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

95 Consultation Question 87:

Please provide your views below:

96 Consultation Question 88:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Not Answered

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

It is essential that health and care professionals involved with pregnancy and childbirth always act in the interests of the woman giving birth, and not in the interests of 'Intended parents'.

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

I have no personal experience of surrogacy. But I do have personal experience of adoption. And I feel that what I have come to understand about the profound consequences of breaking the bond between mother and child is enormously relevant to the current debate about the law regarding surrogacy.

I qualified as a social worker in 1967 and went on to work as a family caseworker, mainly working with children and families, which in some cases included adoption.

In 1975 I founded an organisation called Jigsaw (the National Association and Register of Adoptees and their Natural Mothers). This was instrumental in providing evidence to the Government in relation to Section 26 of the 1975 Children Act, which granted adoptees the right to obtain a copy of their original birth certificate at the age of 18.

I was motivated not only professionally, but by first-hand knowledge of the life-changing and life-long emotional pain and anguish of having to give up one's child for adoption. Carrying that level of inner pain and unhealed trauma affected and shaped all subsequent relations, with family, husband, and children.

What I didn't know at that time, but was soon to learn, was of the simultaneous life-long trauma experienced by thousands of adults who had been adopted. Many had struggled for decades with feelings that they had been rejected and given away by their mother and found it hard to trust other people in later life, or to feel they could sustain a loving relationship with another person. These feelings were reported time and time again by adoptees who approached us for help and support, totally irrespective of whether the adoption had been 'successful' or not.

The second most pressing issue was one of identity. I cannot stress how important this was for them. What is quite straightforward for most of us can be a lifelong haunting question for an adopted person: "Who am I?". This can bring a profound sense of dislocation and a deeply-felt sense of not truly belonging anywhere or to anyone, and can relentlessly eat away within them despite in many (but not all) cases having loving adoptive parents, a happy marriage and often children of their own.

Like their mothers, adopted children are often enduring a life-long inner pain that nothing can relieve. After more than 40 years since I began this work I now understand a profound truth, that this unacknowledged pain is the pain which comes when you separate a mother and child. There is a deep emotional connection between a mother and the child she has given birth to and brought into the world. It is visceral, and is there for a very good reason. Nature ensures that this powerful emotional connection is accompanied by a powerful hormone, oxytocin, which can create an indestructible bond between mother and child which ensures that the child is drawn to the mother for comfort and nurture, and that the mother experiences overwhelming feelings of protectiveness towards her new born infant. It is this powerful mother-child bond which creates the feeling of protectiveness, care and nurture which is what will ensure the survival of the infant. This sometimes fierce protectiveness can be seen in all mothers, whether animal or human, if they feel there may be a threat to their infant(s).

When that bond is fractured, profound consequences can flow for both mother and child. My fear is that this is little understood by society at large, and especially by those advocating 'surrogacy', because it takes a machete to that precious and unique bond embodied in the bringing forth of new life, and severs it before it has a chance to develop. It strikes at the very heart of what it is to be a mother, and what it is to have a mother. And if you take that away from a child, so that they feel, at the deepest level of their being, that they are someone who never had a 'mother', you leave them bereft.

I wonder whether in our cavalier and superficial rush to reduce motherhood to merely a transaction between an egg, a sperm, and a rented womb we have any idea what we are storing up in the future for those who will be the product of it?

The Law Commissions should fundamentally reconsider the proposals, look again at the underlying principles and framework that underpins them, and consult more widely.

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 22:45:01

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Other individual

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Not Answered

Please provide your views below:

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

Not Answered

Please provide your views below:

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Not Answered

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

No

Please provide your views below:

15 Consultation Question 8:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Not Answered

Please provide your views below:

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

18 Consultation Question 11:

Not Answered

Please provide your views below:

19 Consultation Question 12:

Not Answered

Please provide your views below:

20 Consultation Question 13:

Not Answered

Please provide your views below:

21 Consultation Question 14:

Not Answered

Please provide your views below:

22 Consultation Question 15:

Not Answered

Please provide your views below:

Not Answered

Please share your views below:

23 Consultation Question 16:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

Not Answered

Please provide your views below:

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

26 Consultation Question 19:

Not Answered

Please provide your views below:

Please provide your views below:

27 Consultation Question 20:

Not Answered

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

29 Consultation Question 22:

Please provide your views below:

30 Consultation Question 23:

Please provide your views below:

31 Consultation Question 24:

Please provide your views below:

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

33 Consultation Question 26:

Not Answered

Please provide your views below:

34 Consultation Question 27:

Not Answered

Please provide your views below:

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Not Answered

Please provide your views below:

36 Consultation Question 29:

Please provide your views below:

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Not Answered

Please provide your views below:

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

39 Consultation Question 32:

Please provide your views below:

Please provide your views below:

40 Consultation Question 33:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

41 Consultation Question 34:

Please provide your views below:

Please provide your views below:

Please provide your views below:

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Not Answered

Please provide your views below:

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Not Answered

Please provide your views below:

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Not Answered

Please provide your views below:

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Not Answered

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

Not Answered

Please provide your views below:

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

Not Answered

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Not Answered

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

I object to the commodifying of the female body. 'The surrogate' is a living human being, who risks lifelong medical issues, possibly even death (as you mention, the surrogate may die in childbirth) to provide something which is not a medical necessity. The human body is not something to be rented out and women are not merely an incubator to carry something that doesn't belong to them. How many women who have borne children will be part of this panel- this consultation?

Personal issues from child birth include- incontinence and dental issues (this is well documented in women). I will carry these issues until the day I die. I understand that you have to use legal language, but these are living, breathing women who are being used. Not 'surrogates' who carry a child and then pass it on. They will remember that child until they die and so will their body. Women who are rented to bear children are open to abuse from every side. You also need to ask who gains here? Is it the surrogate? Or is it (potentially) people paying for a service? To build a child?

As you so nicely mention, women die in childbirth. I couldn't see any protection for the woman's family if she dies doing this. Perhaps I missed it. Where are the protections for the women who is persuaded then changes her mind; without her body, that child wouldn't exist. Being childless can be distressing, awful, terrible; but it isn't a right to have a child. It isn't a human right to rent another person's body.

In addition, I understand this document is written by legal people- why was there no effort to make it understandable by everyone? It is ridiculously long and difficult to understand. People with an average level of literacy wouldn't be able to access this successfully. Is this because the lobby groups and people pushing for this are well off, well educated people who want to 'buy' a baby in the legal way and feel good about themselves?

How many groups of women have been consulted? How many Mothers have been involved in this consultation?

It seems to me that this consultation has already been decided. How many women, who have carried a child in their bodies been specifically asked?

In addition, there are children speaking up saying they are psychologically damaged by being born to a surrogate. A quick google will find this; in fact, this was mentioned on the recent documentary by Lance Dustin Black. He didn't really seem to want to hear her distress about being a surrogate child; but she still told her story.

This topic has been lobbied for by people who want to rent a womb because it suits them. Be truthful- how many 'activists' are pushing for this because it suits them. How many women's/mothers'/parents groups that are against it have you consulted? Because they see the woman as nothing more than someone who gestates a child. Till the day that woman dies, she will be a Mother and this is seeking to erase this.

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

N/A

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Other individual

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:



7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and

- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

- 1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

- 1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

- 1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

- 1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and

parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth

and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogacy arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 23:06:38

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

COTS Childlessness Overcome Through Surrogacy

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a response on behalf of an organisation

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Surrogate

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

This is the only way to discourage people from going abroad. It will protect the child born through a foreign surrogate and the surrogate herself from exploitation.

Please provide your views below:

No High Court judges only in the family division. They will be ofay with surrogacy laws whereas circuit judges might only hear the occasional case.

9 Consultation Question 2:

Please provide your views below:

We are happy that it rest with lay justices as it is now.

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

Not Answered

Please provide your views below:

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Yes

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

Yes

Please provide your views below:

Yes absolutely vital that intending parents have legal responsibility immediately following the birth of their surrogate child. For medical purposes, clarity for midwives and peace of mind for both surrogate and intending parents. It prevents the baby being left in legal limbo for 6 months to a year that Parental Orders take to be granted at the moment.

15 Consultation Question 8:

Yes

Please provide your views below:

We do this already with our database.

Another period

Please provide your views below:

25 years so child has plenty of time to access their file after they become of age.

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Yes

Please provide your views below:

Yes just two known donors is right as it is in the best interests of the child. Sperm from intending father and surrogate uses her own egg.

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

Yes it should because the child should know its genetic parent.

18 Consultation Question 11:

No

Please provide your views below:

We believe it should be sooner. Within 24 hours of delivery. A surrogate is most likely to know before the birth that she had no intention of relinquishing the baby so the decision should be made quickly. Unfair to new born baby to string out who will take custody as bonding needs to happen asap.

19 Consultation Question 12:

Yes

Please provide your views below:

If there is conflict of course they will be excluded from the new pathway. It would be for a court to decide in the best interests of the child.

20 Consultation Question 13:

Yes

Please provide your views below:

I think this would be a rare occurrence so reverting to the old pathway via a Parental Order would be best.

21 Consultation Question 14:

Yes

Please provide your views below:

If the pathway has been followed no further assessment should be required as this would defeat the whole purpose of the new pathway.

22 Consultation Question 15:

Yes

Please provide your views below:

He should not be the legal parent. That would be unfair to the intended father.

No

Please share your views below:

No the surrogates partner would not want to be named as the legal parent far from it. Its wrong, its a lie on an important document.

23 Consultation Question 16:

Yes

Please provide your views below:

They need to take care of funeral arrangements immediately as the surrogate will also be in a very bad way and will not want to deal with all of that grief on top of everything else. The parents must have rights as to where how and when a funeral takes place. It will help them grieve.

Yes

Please provide your views below:

Absolutely yes.

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

Yes

Please provide your views below:

I agree.

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

They should be included in the new pathway as it was the surrogates intent before the birth and her subsequent death that she would give them legal rights to the baby.

26 Consultation Question 19:

Yes

Please provide your views below:

Yes as the intending parents have named the guardians of the child should this occur. Their wishes should be respected.

Please provide your views below:

The intended parents named guardians should be able to apply for the PO in their stead with them listed as the parents as long as surrogate consents.

27 Consultation Question 20:

Yes

Please provide your views below:

The single applicant who applied should get the PO. No opposition should be allowed.

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

A temporary three way model is ok and surrogate would be extinguished when PO is granted or on the production of the second birth certificate

29 Consultation Question 22:

Please provide your views below:

If they have chosen the new pathway and have complied no extra oversight should be necessary. But if any is proposed administrative would be best.

30 Consultation Question 23:

Please provide your views below:

The only issue anyone should be concerned about is what is in the best interests of the child. In a dispute where the surrogate genuinely cannot part with the child as she has bonded during the pregnancy should only relate to traditional surrogacy where she has a genetic link to the child. From past experience the arrangement has been fraught all the way through with the surrogate expressing concerns over the intended parents parenting skills or their relationship with one another. COTS has not had a surrogate change her mind for over 25 years as they are all so well informed nowadays.

31 Consultation Question 24:

Please provide your views below:

Sorry I don't know

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

Yes seems sensible

33 Consultation Question 26:

Yes

Please provide your views below:

Yes of course

34 Consultation Question 27:

Yes

Please provide your views below:

Absolutely right

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

No

Please provide your views below:

Disagree the intending parent should retain parental responsibility not the surrogate she needs very little time to change her mind and will not want to take legal responsibility for the child herself. That is the whole point of the new pathway.

36 Consultation Question 29:

Please provide your views below:

Restrict the surrogate is fine as she does not want it anyway, if there is no dispute.

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Yes

Please provide your views below:

Yes I believe that would be in everyone's best interest.

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

N/A

39 Consultation Question 32:

Please provide your views below:

Yes I am against independent arrangements as it's where most of the problems occur. So to make all parties conform to the new pathway would be a wise move.

Please provide your views below:

Best to ensure all parties belong to an agency where there will be records kept, guidance, screening and counselling in place. It's a minefield all parties need protection and the only way they get it is through a reputable agency like COTS and SUK.

40 Consultation Question 33:

Yes

Please provide your views below:

Happy to oblige

Yes

Please provide your views below:

I think we work in a very similar fashion as each other (SUK & COTS). It's only Brilliant Beginnings that operates more in a commercial fashion

Yes

Please provide your views below:

41 Consultation Question 34:

representing the organisation to, and liaising with, the regulator;; managing the regulated surrogacy organisation with sufficient care, competence and skill;; ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;; training any staff, including that of the person responsible; and, providing data to the regulator and to such other person as required by law.

Please provide your views below:

Yes as far as our database will allow. Hopefully this will not cost us too much money to comply.

Please provide your views below:

No can't think of any

Please provide your views below:

Person should have vast experience in this field, ideally best learnt from personal experience. Have good counselling skills, empathy, good listening skills, remain neutral, non judgemental, supportive, helpful, friendly and positive with a sense of humour.

Its not really about a qualification its about character, integrity, honesty and attitude.

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Yes

Please provide your views below:

SUK & COTS are genuinely not for profit. As long as staff can be paid that's how it should remain. We don't want commercial surrogacy in Britain.

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

We have several varied platforms in place to match. Surrogates freely choose from paper profiles and also from our closed Facebook groups where they can make connections.

Once she has selected her intended parents we then send them her file. Then they talk on the phone and meet in person if they want to take things further.

All couples would have had counselling with a BICA independent counsellor, DBS checks, GP referral letter and blood tests if choosing traditional surrogacy. That is all we do in matching and facilitating.

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Yes

Please provide your views below:

Yes sounds sensible

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

Yes we should be able to as they still need guidance and maybe encourages into following the new pathway with all its benefits.

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

Civil only its not a crime to want to help as long as its genuine.

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

No

Please provide your views below:

It might need a new body to be formed as HFEA may not be the correct organisation to govern this.

Please provide your views below:

Only to ensure the new pathway is being adhered to nothing more.

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Yes

Please provide your views below:

I think we all agree that they cannot enforce a contract when this is just a gentleman's agreement between the two parties. This could only be enforced in commercial surrogacy.

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

Yes

Please provide your views below:

As long as its reasonable currently £650 to £850 to join COTS. Similar £950 for SUK but its 12K for Brilliant Beginnings which makes them more commercial.

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

Yes

Please provide your views below:

This would make a huge difference to COTS attracting new surrogates as they are in such short supply. Demand has doubled and supply has not. Young mothers may still believe its illegal so education is the key too. This way we can spread the word open up peoples minds to just how enormous the problem of infertility is.

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

Yes absolutely agree so important for the child.

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Yes

Please provide your views below:

Yes this would be a good idea that way there will be no secrecy.

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

Unsure sorry. My only concern is that registrars are aware of how to register a surrogate child on the birth certificate. Some registrars are helpful others haven't a clue as they might never have encountered a surrogate birth registration before.

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

Yes there should be no secrets

55 Consultation Question 47:

Yes

Please provide your views below:

If this is possible yes. At COTS we record all this information except when its a donor egg then we have no record of this person but the IVF clinic may have.

Yes

Please provide your views below:

Hopefully without the DNA testing being compulsory as it costs a fortune. Only to be used if there is doubt about the parentage.

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

It should be the full identity of the birth mother for sure, regards the others it would be a bonus if they were identified.

57 Consultation Question 49:

Yes

Please provide your views below:

Perfectly correct

Please provide your views below:

Only if the parents or guardian of the child believes he/she is mature enough to understand the knowledge that this will impart and the implications for the child

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

I suppose it could happen so yes

59 Consultation Question 51:

Yes

Please provide your views below:

Great idea yes totally agree they should be aware of their siblings.

Please provide your views below:

Yes if they wish, it will be some thing special they have in common

60 Consultation Question 52:

Please provide your views below:

Yes but in reality they should already know.

Please provide your views below:

Yes but in reality they should already know.

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

Yes if possible

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

Yes it should be immediate

63 Consultation Question 55:

Yes

Please provide your views below:

If you cannot get consent from a surrogate because she has disappeared this should not prevent or delay a PO being granted

Yes

Please provide your views below:

The court must always act in the best interests of the child yes agreed.

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

Yes

Please provide your views below:

Absolutely yes long distance surrogacy is not good.

Please provide your views below:

Yes at least a year

65 Consultation Question 57:

Please provide your views below:

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Yes

Please provide views below:

Would demonstrate intent.

67 Consultation Question 59:

Yes

Please provide views below:

Yes but hate the idea. Hopefully will not happen often as it might as well be adoption.

Please provide views below:

I suppose it should as long as the donors details are known

Yes

Please provide views below:

There must be a link to their bringing back a child especially for international surrogacy.

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

Yes

Please provide your views below:

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

Yes

Please provide views below:

70 Consultation Question 62:

Please provide your views below:

For all cases we only want to help genuinely infertile couples who have exhausted all other possible means to have a child. COTS could not work with vain women or career women who are not willing to attempt to carry their own child. Never.

Please provide your views below:

We just ask for a letter from their GP or from their consultant to state it would be life threatening to carry their own child or any other serious medical issue. Absence of a womb, cancers that feed off hormones, kidney or liver problems and diabetics.

71 Consultation Question 63:

Yes

Please provide your views below:

We do this already except on donor gametes.

Please provide your views below:

No I don't think DNA evidence is required unless there is doubt. People who have contributed gametes should be named on the register. With 1065 births this has not been necessary.

Yes

Please provide your views below:

Of course

72 Consultation Question 64:

Yes

Please provide your views below:

We have a cut off age of 50 for both intended parents we impose that ourselves. Unless they have their own surrogate then we will guide them.

Please provide your views below:

We are comfortable with 50 as we feel this is in the best interests of the child who needs their parents to be alive well into their twenties.

No

Please provide your views below:

Rather it was over 21 far too young at 18 to know their own minds regards the huge responsibility of raising a child.

73 Consultation Question 65:

No

Please provide your views below:

Prefer 21 years old at least as it would be best if they had completed their own families and at 18 that's unlikely one would hope!

No

Please provide your views below:

Over 21 preferred

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Yes

Please provide your views below:

Protects all parties agreed

Please provide your views below:

Hard to monitor this but through COTS all this testing is carried out and is in place before inseminations commence. This might prove difficult for independents that's why through an agency is best.

75 Consultation Question 67:

Yes

Please provide your views below:

Yes we use a BICA accredited counsellor already as there are many unqualified useless ones out there unfortunately. If they are using an IVF unit they will often insist on the parties seeing their own in house counsellor. As long as we are all on the same page this works well.

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

No

Please provide your views below:

As long as their fees are capped as intending parents are not made of money. Legal advice has not been necessary up to now and we have managed very well without it. As for the actual agreement I cannot see that a lawyer would have the inside knowledge that these sessions require. At COTS we ask them to complete their own agreement taken from the COTS template. Then during a session with all four parties every answer is discussed in great length regarding the full implications of what they have agreed to before they all sign.

77 Consultation Question 69:

Yes

Please provide your views below:

Yes best to be safe than sorry

Please provide your views below:

Probably yes

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

This is not always the case many young women are emphatic that they do not want children of their own. We have experienced quite a few of these now and they have been very successful although we proceed with even more caution and counselling [REDACTED]. The last thing we want to do is ruin lives by surrogate bonding and couple distraught. Best case scenario is to make it GS only.

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

No

Please provide your views below:

We can't inflict this as it's a surrogate's choice as to how many pregnancies. We have many surrogates on ten. We will ask their GP or consultant whether it is safe for her to carry and give birth again. That is what counts her individual health.

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

based on an allowance;

Please provide your views below:

A monthly living allowance is far better to ensure a surrogate eats well during the pregnancy.

81 Consultation Question 73:

Please provide your views below:

Yes essential costs such as travel, childcare, vitamins, time off work/ loss of wages to attend hospital or clinic appointments. Maternity clothes, cleaner if required. Any medicines for the GS surrogates, ovulation and pregnancy testing kits. Any alternative therapies that might alleviate some of the more serious complaints that are associated with pregnancy.

82 Consultation Question 74:

Please provide your views below:

We believe it to be a private arrangement for a couple to pay their surrogate what they wish. It could be a recuperation holiday for her and her family after the birth is over. Her family do often pay the penalty of a tired grumpy mother who can't do much in the latter stages of pregnancy. Or indeed after a C section should it occur.

83 Consultation Question 75:

Please provide your views below:

Everything as mentioned above

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

Of course she should have her actual lost earnings covered its immoral not to.

85 Consultation Question 77:

Please provide your views below:

When a surrogate makes the decision to become pregnant for a couple she knows very well what might occur. She has to decide if its more important to become a surrogate or whether career advancement is more important.

I don't think loss of potential earnings is justified. Actual loss of earnings due to a pregnancy complication yes. If it was to be paid where would expenses ever end for the poor couple struggling to pay her normal expenses.

86 Consultation Question 78:

Please provide your views below:

I am not aware of any surrogate having her benefits cut because she is a surrogate. The monies paid to her can be seen as a gift from her couple.

87 Consultation Question 79:

pain and inconvenience arising from the pregnancy and childbirth; medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or, specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

Please provide your views below:

Yes we have all these covered in our own template agreement.

Please provide your views below:

If you speak to intended parents they will always say how can they possibly repay this amazing lady for the life changing gift she has bestowed on them. They want to pay her in fact they often need to pay her as they would feel beholden to her for the rest of their lives. The compensation she receives helps them feel better about the whole arrangement. There is so much altruism attached to every surrogate arrangement that is our findings. We rarely get greedy surrogates.

a fixed fee set by the regulator (operating as a cap on the maximum payable), or

Please provide your views below:

I would prefer a fixed rate fee capped at maximum 20k. The most normal monies paid is 12 to 15k. We have very few on 20K. This way there is some manoeuvrability on payments made. I could not condone a payment of 30k not through COTS. We believe the payment parameter we suggest attracts the right women for all the right reasons. It is a 24/7 task with many sleepless uncomfortable nights so this amount is far from profiteering. Unfortunately for those on low incomes it may well be out of their reach but then again so is expensive IVF treatment which has a 70% failure rate. It just cannot be helped. For surrogate arrangements within families very little is paid other than true pregnancy expenses which is fine for those making their own domestic arrangements.

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

All our surrogates are covered by life insurance for a policy pay out of £500,000 in the event of her death for a two year period. Her own family must be protected should the very worst happen. A mothers role is priceless.

89 Consultation Question 81:

Please provide your views below:

Parents can buy whatever they wish for their surrogate why should it need to be justified or declared? Its private.

90 Consultation Question 82:

It should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

Please provide your views below:

Yes for her inconvenience pain and suffering although she loves it otherwise she wouldn't do it.

a fixed fee set by the regulator.

Please provide your views below:

fee as discussed already 15K is the average max 20K capped

essential costs relating to the pregnancy,, gifts.

Please provide any views below:

already stated as above

91 Consultation Question 83:

Please provide views below:

Yes we have payments for loss or miscarriage up to so many weeks varied sums

some other period of time (please specify in the box below).

Please provide your views below:

A loss or still birth can occur right up to 40 weeks gestation. If the surrogate was being paid 15K she would have been receiving a percentage of that amount per month usually 5% is the average. She would retain that money and any extra depending on the week of the loss its in varying degrees on our agreements.

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Yes

Please provide your views below:

Of course

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

No all discussed

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

Just keep those payments that you agree to make law attached to the rate of inflation as it could take another 30 years to change the law again!!!!!! Sorry I am a cynic

95 Consultation Question 87:

Please provide your views below:

Maybe make bank statements available to show payments made to a surrogate from the IP's account and one for the surrogate showing the payments into her account

96 Consultation Question 88:

Yes

Please provide your views below:

These are gentleman's agreements not sure how they can be enforced without it being classified as a commercial arrangement.

Yes

Please provide your views below:

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

Not applicable to COTS as we are not involved with overseas arrangements

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

100 Consultation Question 92: We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?

Not Answered

Please provide your views below:

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

102 Consultation Question 94:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Please provide your views below:

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

Not Answered

Please provide your views below:

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Not Answered

Please provide your views below:

106 Consultation Question 98: We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood. Do consultees agree?

Not Answered

Please provide your views below:

107 Consultation Question 99:

Not Answered

Please provide your views below:

108 Consultation Question 100:

Please provide your views below:

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

Yes all parties should be able to take maternity leave. New IP's and the surrogate and her partner so she is taken care of for at least a week following the birth.

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Yes

Please provide your views below:

Be nice if it was both but can't see that happening. More likely to be taken as unpaid leave or holiday allowance.

111 Consultation Question 103:

Please provide your views below:

Would be wonderful for intending mother to have time off work but again can't see it happening.

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

No probably not

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

Unsure

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

No its covered in their wills

115 Consultation Question 107:

Please provide your views below:

Yes education of all health care workers as how to act when surrogacy is encountered. Some of our poor members have received abuse from medical staff who have made their feelings very well known. That's from radiographers to midwives and health visitors. Many surrogates doctors surgeries have also been unsupportive so much so that they have changed GP's.

Please provide your views below:

Just to educate all health professionals how to behave so they all sing from the same page.

Please provide your views below:

We find midwives on the whole very accommodating to the needs of the parties involved in a surrogate arrangement. Some get very excited to witness the very special birth and cry tears of joy as well.

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

No I think its covered everything

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

I feel if we allow payments and are allowed to advertise we should be able to attract more surrogates to help the ever growing number of infertile couples requiring our help. It is not enough money to attract desperate women we check their motivation as routine already.

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Just bring in these new laws asap 30 years I have been trying

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

n/a

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Other individual

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[REDACTED]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential.

As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Consultation Question 3.

- 1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

- 1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

- 1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

- 1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and

parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth

and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

- 1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

- 1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

- 1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

- 1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;

- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit.

There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 23:07:31

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Other individual

5 What is your email address?

Email address:

6 What is your telephone number?

Telephone number:

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

There's a serious and realistic risk that international surrogacy poses opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so they should be overseen by the most senior and experienced of judges.

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

These cases should not be heard by a lay judge. They should be heard by a senior judge with the most experience. It's crucial for the wellbeing of children and birth mothers that issues to do with their human rights are taken seriously.

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

No

Please provide your views below:

No, we should follow the recommendation of the UN Special Rapporteur, who said that all decisions involving legal parenthood and parental responsibility in surrogacy should be taken by a court or other recognized authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be available to the birth mother.

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Yes

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

No

Please provide your views below:

This is a bad idea. If the birth mother is happy to freely give the child to other people after it is born then there is no need for this rule. Therefore it is intended to create a legal power to force birth mothers to give away children. It contradicts the UN Special Rapporteurs key recommendations and the Hague Convention on the Protection of Children and Cooperation in respect of the Intercountry Adoption of 1993. A law like this removes reasonable safeguards against the sale of children and the exploitation of birth mothers. This proposal would set a very dangerous precedent for all women, all mothers, all children.

It is true that some surrogate mothers have expressed support for this rule prior to the consultation - well those individuals are perfectly entitled to give up the children they carry themselves but to force that rule on to all women is not right. The rights of the child must be prioritised regardless of what some surrogate mothers say they want.

15 Consultation Question 8:

Other

Please provide your views below:

Don't have the new pathway at all.

Not Answered

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Other

Please provide your views below:

There should be no regulated surrogacy organisations at all

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

There should't be a new pathway

18 Consultation Question 11:

No

Please provide your views below:

Honestly the person who proposed this has never had a child. The period immediately after birth is very challenging and confusing, and this just doesn't give the birth mother enough time. She may have had a caesarean and be recovering in this period. There may have been significant birth trauma. It's not reasonable to put pressure on the birth mother to make such a crucial decision and put in place hoops that she has to jump through. It's a much more reasonable plan for the decision to be made after the child is born, and to follow the UN Special Rapporteur's recommendations. Decisions about the

child should be made after the birth.

19 Consultation Question 12:

No

Please provide your views below:

There shouldn't be a new pathway in the first place.

The birth mother should be the legal parent at birth and decisions about any subsequent change of legal parenthood and parental responsibility should be taken after the birth. This ensures that the court will put the child's best interest first, and follows the recommendations of the UN Special Rapporteur.

20 Consultation Question 13:

No

Please provide your views below:

I don't think the person who came up with this idea has any concept of what it's like for women, especially those who have been a victim of sexual abuse or domestic abuse. This is not what consent is at all. This declaration is not worth the paper it's written on, there are so many potential ways in which a person could be manipulated or coerced into giving it.

21 Consultation Question 14:

No

Please provide your views below:

I think it's ridiculous to propose that an organisation with a vested interest in a particular outcome should be responsible for ensuring that the procedure is followed.

It's really important to protect the best interests of children and birth mothers that the court should make that assessment after the birth because they are independent. The pre-conception assessment would usually happen a year before the child is born and much could change in that time. Pregnancy, birth and post-partum changes are so significant.

22 Consultation Question 15:

No

Please provide your views below:

This is a significant change in the legal parenthood rules and would have an implication for all children. It should have a full assessment before it is introduced.

Not Answered

Please share your views below:

23 Consultation Question 16:

No

Please provide your views below:

The birth mother should always be the legal parent of the child at birth, and this should not change if the child is stillborn.

Not Answered

Please provide your views below:

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

No

Please provide your views below:

No the birth mother should always be the legal parent.

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

There shouldn't be a new pathway.

26 Consultation Question 19:

No

Please provide your views below:

Same as before, the birth mother should be the legal parent at birth.

Please provide your views below:

27 Consultation Question 20:

Yes

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

Don't introduce a three parent model. The birth mother should be the legal parent at birth and decisions about the arrangements for a child should be taken by a court after the birth of the child with the best interests of the child being paramount.

29 Consultation Question 22:

Please provide your views below:

There shouldn't be a new pathway at all.

30 Consultation Question 23:

Please provide your views below:

No factors should be added. The welfare checklist is adequate and it conforms to the UN Special Rapporteur's recommendation that the child's best interest is paramount.

31 Consultation Question 24:

Please provide your views below:

The child's best interest should drive all decision.

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

The court should always have oversight of surrogacy arrangements because of the real risks of the sale and trafficking of children and of the exploitation of birth mothers. The laws around surrogacy should not be loosened because of the potential human rights abuses involved. No, the intended parents should not be added to the list of people who can apply to the court without leave.

33 Consultation Question 26:

No

Please provide your views below:

Decisions should be made after the child is born with oversight of the court.

Some individual women saying they are happy with this arrangement does not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

34 Consultation Question 27:

No

Please provide your views below:

No the only person who should have parental responsibility upon the birth of the child is the birth mother.

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Other

Please provide your views below:

I agree that the birth mother should have parental responsibility for the child but not that the 'intended parents' should get automatic legal parenthood and parental responsibility. All decisions should be taken after the birth of the child.

36 Consultation Question 29:

Please provide your views below:

I think the very existence of this question illustrates how ridiculous the concept of sharing parental responsibility between the birth mother and 'intended parents' is. It seems like you are trying to propose some sort of watered down version of parental responsibility. How is this in the best interests of the child? It is not. The birth mother should have parental responsibility at the birth.

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Other

Please provide your views below:

There shouldn't be a new pathway.

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

You should be aware that marginalised and vulnerable people will not be responding to this consultation, so you will not be obtaining the views of people who need to be protected.

39 Consultation Question 32:

Please provide your views below:

No new pathway

Please provide your views below:

There shouldn't be a new pathway.

40 Consultation Question 33:

No

Please provide your views below:

There should be no organisations with a vested interest in a particular outcome, because it increases the risk to women and children that their human rights would be violated.

Other

Please provide your views below:

No regulated surrogacy organisations at all.

Other

Please provide your views below:

No surrogacy organisations.

41 Consultation Question 34:

Please provide your views below:

None of the above.

If an organisation 'sells' surrogacy it has a vested interest in treating this as a box ticking exercise. That is why there shouldn't be organisations promoting surrogacy in the first place.

Please provide your views below:

Please provide your views below:

Shouldn't be one.

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Other

Please provide your views below:

Making an organisation not for profit does not make it ethical. There simply isn't any way to 'sell' surrogacy and truly have an ethical approach to the women who you are selling. Even non profit making organisations are driven by commercial imperatives, their directors can have fantastic levels of remuneration. As soon as an organisation has a vested interest in a woman acting a surrogate and continuing to act as a surrogate they have an incentive to coerce that woman to relinquish the child.

It is so hard for women to be believed when we say that we were coerced.

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

I disagree with organisations providing matching and facilitation services.

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Other

Please provide your views below:

No because there shouldn't be a new pathway. Matching and facilitation services shouldn't happen at all. Offering such services should be a criminal offence.

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

No matching and facilitation services.

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

Any organisation that offers matching and facilitation should be subject to criminal sanction.

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Other

Please provide your views below:

There shouldn't be regulated surrogacy organisations.

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Yes

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

No. Surrogacy should not be opened up in this country. The very idea of anyone gaining money from arranging surrogacy is terrible. Access to women's bodies should not be available for a fee.

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

There are so many risks that vulnerable women will be targeted by ads that there is no possible way to make it safe. It should remained banned. Think of the opportunities for microtargeting a woman searching for help with debt problems with surrogacy ads. I think you have suggested no restrictions at all because contemplating the kind of restrictions that would protect vulnerable people make it very obvious that surrogacy organisations would target them and that they would be vulnerable to exploitation.

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Other

Please provide your views below:

The birth mother should be recorded as the parent on the birth certificate.

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

No it does not need reform.

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

55 Consultation Question 47:

Yes

Please provide your views below:

Other

Please provide your views below:

I disagree with the new pathway. However, children should have access to information about their origins so they should have as much information as possible, including identifying information about gamete donors.

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

I think the information should be identifying because the child has the right to know about their birth.

57 Consultation Question 49:

Yes

Please provide your views below:

Please provide your views below:

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

Yes this should be possible.

59 Consultation Question 51:

Yes

Please provide your views below:

Please provide your views below:

yes I agree

60 Consultation Question 52:

Please provide your views below:

yes

Please provide your views below:

yes

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

No the intended parent should not be recorded in the register.

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

63 Consultation Question 55:

No

Please provide your views below:

This is a violation of women's rights and would increase the risk of child trafficking and the exploitation of women. An adoption order can be considered as an option when a parental order is not possible.

No

Please provide your views below:

This is a violation of women's rights and would increase the risk of child trafficking and the exploitation of women. An adoption order can be considered as an option when a parental order is not possible.

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

No

Please provide your views below:

There shouldn't be a new pathway and this would just risk creating surrogacy tourism with parental orders being given to people who are habitually resident rather than domiciled in the UK.

Please provide your views below:

65 Consultation Question 57:

Please provide your views below:

The qualifying categories of relationships should not be reformed or removed.

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Other

Please provide views below:

There shouldn't be a new pathway.

67 Consultation Question 59:

No

Please provide views below:

The genetic link should be retained.

Please provide views below:

Double donation should not be permitted.

Yes

Please provide views below:

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

No

Please provide your views below:

There is no sense in which there is a 'medical necessity' for surrogacy.

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

No

Please provide views below:

This is just silly.

70 Consultation Question 62:

Please provide your views below:

There isn't a medical necessity because children are not a medical necessity. I know what it is to not have a child that you long for, but that doesn't create a medical necessity for surrogacy. It's hard and it's not fair and the grief is enormous, but none of that actually creates a need for medical intervention and surrogacy.

Please provide your views below:

71 Consultation Question 63:

Other

Please provide your views below:

I don't think there should be a new pathway. However, children should have access to information

Please provide your views below:

Not Answered

Please provide your views below:

72 Consultation Question 64:

No

Please provide your views below:

Surrogacy is particularly unethical when the 'intended parents' are old. It therefore makes ethical sense for there to be an age limit. However, the simplest solution is to not open up surrogacy at all.

Please provide your views below:

Other

Please provide your views below:

18 is so young. Surely the minimum age you would even propose is 25. Surely you would never propose a woman's first child is born in a surrogacy arrangement. How could a woman possibly judge what pregnancy and birth will be like before they have happened to her? The simplest solution is just to not open up surrogacy at all.

73 Consultation Question 65:

Other

Please provide your views below:

Just don't do it.

Other

Please provide your views below:

This is a bad idea. No woman should have her first pregnancy as a surrogate.

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Other

Please provide your views below:

No new pathway

Please provide your views below:

75 Consultation Question 67:

Other

Please provide your views below:

Don't introduce a new pathway at all.

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Other

Please provide your views below:

Don't introduce a new pathway at all.

77 Consultation Question 69:

Other

Please provide your views below:

Don't introduce a new pathway at all.

Please provide your views below:

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

Although I think there should be no new pathway, I think the idea of a woman who has never given birth being subject to it is particularly abhorrent. Until a woman has experienced pregnancy and birth she simply could not assess it's impact on her, and it would be completely unethical to propose she undertake it as a surrogate.

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

No

Please provide your views below:

Oh my god no. How could anyone with an interest in women's health even suggest this idea? Of course there should be a limit on the number of times a woman goes through surrogacy. Even dogs are treated better than this.

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

Not Answered

Please provide your views below:

None of the above. Any payment to a surrogate creates the conditions for exploitation. It creates a power dynamic that is inherently coercive. There's no way to make it ethical to make a woman's income dependent on performing surrogacy.

81 Consultation Question 73:

Please provide your views below:

None of the above. Any payment to a surrogate creates the conditions for exploitation. It creates a power dynamic that is inherently coercive. There's no way to make it ethical to make a woman's income dependent on performing surrogacy.

82 Consultation Question 74:

Please provide your views below:

None of the above. Any payment to a surrogate creates the conditions for exploitation. It creates a power dynamic that is inherently coercive. There's no way to make it ethical to make a woman's income dependent on performing surrogacy.

83 Consultation Question 75:

Please provide your views below:

None of the above. Any payment to a surrogate creates the conditions for exploitation. It creates a power dynamic that is inherently coercive. There's no way to make it ethical to make a woman's income dependent on performing surrogacy.

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

None of the above. Any payment to a surrogate creates the conditions for exploitation. It creates a power dynamic that is inherently coercive. There's no way to make it ethical to make a woman's income dependent on performing surrogacy.

85 Consultation Question 77:

Please provide your views below:

None of the above. Any payment to a surrogate creates the conditions for exploitation. It creates a power dynamic that is inherently coercive. There's no way to make it ethical to make a woman's income dependent on performing surrogacy.

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

Please provide your views below:

It's not at all reasonable to place a monetary value on harm to a woman's body. It's not ethical at all. Also, postpartum depression is not on this list. All this does is create the impression that the risk of birth can be managed with money, and they cannot, it is a profound process to bring a child into the world and it is not something that could ever be remunerated. I find it a bit bizarre that this question is phrased to suggest that the payment would be optional, as if it were an act of generosity by the 'intended parents' to recognize the risk that the birth mother is taking rather than their responsibility as human beings.

Please provide your views below:

No surrogacy commoditises women's reproductive functions and puts their bodies up for sale and should not be allowed.

Not Answered

Please provide your views below:

None of the above. It's a particularly bad idea to leave it to the parties to negotiate because that would just incentivise everyone involved to find someone vulnerable and unable to negotiate well. The power dynamics make it impossible it could ever be a fair negotiation.

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

This question just illustrates the insanity of surrogacy. There's no other circumstances where an optional procedure with no benefit to the patient that carried a risk of death would be legalised. It's just not ethical.

89 Consultation Question 81:

Please provide your views below:

The whole reason that this question exists is because of the unfair power dynamic that creates the conditions for exploitation. It's wrong for surrogacy to get this new legal status and for those conditions to be applied to more women. No new pathway.

90 Consultation Question 82:

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

Please provide your views below:

It's an unfair power dynamic that creates the conditions for exploitation.

Not Answered

Please provide your views below:

I disagree with both of these, but most strongly with the idea that the parties should be able to set a fee themselves because it incentivises the people involved to find the most vulnerable women possible to get them to accept lower fees.

Please provide any views below:

None of the above.

91 Consultation Question 83:

Please provide views below:

The very idea that a woman should be financially penalised for miscarriage or suffer financial consequences for ending a pregnancy detrimental to her illustrates the power dynamic inherent in paid surrogacy arrangements and shows how exploitative they can be. There shouldn't be any financial incentive.

Not Answered

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Other

Please provide your views below:

Paid surrogacy is unethical.

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

No

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

We just don't live in the kind of society where women have true freedom to make choices. As soon as you introduce payments it creates a power dynamic that is exploitative. I am completing this consultation because I know most people who have suffered exploitation are not going to be able to do this sort of thing and you won't hear from those of us who have found our choices to be limited and not real choices at all.

95 Consultation Question 87:

Please provide your views below:

96 Consultation Question 88:

Other

Please provide your views below:

No new pathway

Other

Please provide your views below:

The idea that a surrogacy agreement would create some sort of situation where a woman is under pressure to relinquish her bodily autonomy is dreadful.

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

100 Consultation Question 92: We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?

No

Please provide your views below:

The recommendations of the UN Special Rapporteur on this are aimed to protect against the selling a trafficking of children and the protection of the rights of the birth mother, and they should be followed, not this proposal. I think international surrogacy is particularly unethical because of the power dynamics of a surrogate living in a poorer country. It should not be facilitated.

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

102 Consultation Question 94:

No

Please provide your views below:

The recommendations of the UN Special Rapporteur on this are aimed to protect against the selling a trafficking of children and the protection of the rights of the birth mother, and they should be followed, not this proposal. I think international surrogacy is particularly unethical because of the power dynamics of a surrogate living in a poorer country. It should not be facilitated.

No

Please provide your views below:

Yes

Please provide your views below:

Yes

Please provide your views below:

Please provide your views below:

The time limit should be retained but the court should be able to dispense with it when this is in the best interests of the child.

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

No

Please provide your views below:

The recommendations of the UN Special Rapporteur on this are aimed to protect against the selling a trafficking of children and the protection of the rights of the birth mother, and they should be followed, not this proposal.

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Other

Please provide your views below:

I don't think the government should give the impression that international surrogacy is a choice that it supports. If there was a guide it should explain that going abroad to circumvent legal restrictions on surrogacy is unethical and not in the best interests of children. It should explain the real risks to birth mothers from international surrogacy.

106 Consultation Question 98: We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood. Do consultees agree?

Other

Please provide your views below:

No international surrogacy arrangements should not be eligible for the new pathway, but also there should be no new pathway.

107 Consultation Question 99:

No

Please provide your views below:

I don't think the state should facilitate international surrogacy. I think we should comply with the recommendations of the UN Special Rapporteur.

<https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>.

The 'intended parents' having to apply for a parental order is an important safeguard and it should not be removed.

108 Consultation Question 100:

Please provide your views below:

Please provide your views below:

The process should be the same as the checks that would be used in international adoptions. This will safeguard the child and the birth mother from exploitation.

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

No change

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

No

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

I oppose these sorts of reforms because they would normalise surrogacy and create the impression that the state finds it legitimate, and therefore that society finds it legitimate.

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

I oppose these sorts of reforms because they would normalise surrogacy and create the impression that the state finds it legitimate, and therefore that society finds it legitimate.

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

I oppose these sorts of reforms because they would normalise surrogacy and create the impression that the state finds it legitimate, and therefore that society finds it legitimate.

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

I oppose these sorts of reforms because they would normalise surrogacy and create the impression that the state finds it legitimate, and therefore that society finds it legitimate.

115 Consultation Question 107:

Please provide your views below:

I think it's really crucial that women who are undergoing surrogacy should be carefully assessed for signs of being coerced or subjected to domestic abuse. Not just by her partner, but by other people.

It's crucial that the 'intended parents' should never under any circumstances be allowed to overrule the birth mother's wishes to do with her medical care or lifestyle during pregnancy, labour and childbirth. The birth mother should be able to withdraw consent to the involvement of 'intended parents' at any time for any reason with no consequences, including financial consequences.

Please provide your views below:

Please provide your views below:

Midwifery practice should always prioritise the birth mother and the child

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

There's simply no effective provision for addressing the risk that a woman may be coerced into surrogacy, perhaps by an abusive partner or a pimp. It should be a criminal offense to coerce a woman into a surrogacy arrangement, although it would be far better to ban all paid surrogacy because criminal sanctions make very little difference to abusive men or pimps now. I just don't think you understand that laws only have power when they are enforced, and vulnerable women are the least able to enforce the laws to protect themselves. Instead of imagining that you can make laws to take the exploitation out of surrogacy just recognise that the power dynamic is fundamentally exploitative and don't go ahead with this.

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

The assumption behind this consultation is that it's a settled question that paid surrogacy is fine. This is because the pre-consultation was limited to people with a vested interest in surrogacy, including those who will profit from it. Your whole set up excludes the voices of the marginalised and vulnerable. The sheer number of questions in this consultation limited the answers you were going to receive.

For surrogacy to be remotely ethical it should be a truly free choice, and there should be no legal, contractual or financial obligation to give up a child. Anything else creates the conditions for exploitation, and places the burden of enforcing rules designed to reduce the chance of exploitation on to the most vulnerable women.

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

N/A

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response
- ~~This is a response on behalf of an organisation~~
- ~~Other~~

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- ~~Surrogate~~
- ~~Intended parent~~
- ~~Person born of a surrogacy arrangement~~
- ~~Family member of a surrogate~~
- ~~Family member of an intended parent~~
- ~~Legal practitioner~~
- ~~Medical practitioner or counsellor~~
- ~~Social worker~~
- ~~Academic~~
- Other individual

5. What is your email address?

Email address:

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

(1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and

(2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration.

Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,

- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

- 1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;

- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in

surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or

parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Paragraph 8.77

Consultation Question 17.

1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 23:14:11

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

none

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Other individual

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

Not Answered

Please provide your views below:

81 Consultation Question 73:

Please provide your views below:

82 Consultation Question 74:

Please provide your views below:

83 Consultation Question 75:

Please provide your views below:

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

85 Consultation Question 77:

Please provide your views below:

86 Consultation Question 78:

Please provide your views below:

It is not women with well paying jobs, stable homes and solid finances who will be swayed to become surrogates (or coerced into becoming surrogates) by introducing payments, it is women forced to use food banks, those who will lose their homes because of debt or are tired of not being able to provide for their own kids.

87 Consultation Question 79:

Please provide your views below:

Please provide your views below:

Not Answered

Please provide your views below:

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

89 Consultation Question 81:

Please provide your views below:

90 Consultation Question 82:

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

Please provide your views below:

It should not. The commodification of women's bodies, whether we are rented for half an hour or for 10 months, has a huge impact on society - specifically women. When women's bodies are bought and sold, supply and demand comes into play. As with the legalisation of prostitution a surge in demand when it is legalised in studied countries, most often leads to a surge in women being trafficked to service that demand. Many studies including but not limited to the 2013 study by The London School of Economics of 150 countries and The Harvard Study and International Law Review (2014) confirm that if you legalise prostitution - which is simply the renting of women's bodies in another form - in any way, human trafficking increases. If large sums of money are available for the use of women's bodies, women will be exploited, trafficked, bullied, coerced, abducted and duped into surrogacy too. They already are and other countries are banning surrogacy as a result (India, Thailand, Cambodia).

I have yet to hear a single argument as to why commercialising surrogacy would be any different.

Not Answered

Please provide your views below:

Please provide any views below:

91 Consultation Question 83:

Please provide views below:

Not Answered

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Not Answered

Please provide your views below:

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

95 Consultation Question 87:

Please provide your views below:

96 Consultation Question 88:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Not Answered

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Specifically this consultation has not addressed, at all, the impact of commercialising surrogacy on women broadly and on the women whose bodies are being used - it simply addressed the degree of payment.

We should not pretend this is something members of the Law Commission will be encouraging their daughters to do, or that women who are altruistic

surrogates currently, are from the same demographic as those who will be tempted, or trafficked or forced, to do so when money is involved.

You only have to look at the market in going abroad for surrogacy - India, Cambodia, Thailand, Ukraine - to see what happens. And in the USA too it is clear that the women who are surrogates are disproportionately poor - 50% of those in one 2017 study were unemployed ([https://www.fertstert.org/article/S0015-0282\(17\)30887-7/fulltext](https://www.fertstert.org/article/S0015-0282(17)30887-7/fulltext)) , in another 50% were military wives (who find it hard to build careers, whose partners are relatively low paid). This unequal bargaining power negatively impacts the women involved. In 2016, the United States was the only Western countries allowing women to be paid a fee to be a gestational surrogate, most western countries have banned surrogacy as an affront to the dignity of women. The parallels with other industries which buy and sell women's bodies are clear and consequences are too.

In any situation it's a good idea to look at who benefits and who loses. Women as a whole will not benefit, the consequences; the risk of coercion, trafficking, exploitation by agencies keeping most of the money, exploiting poor women in desperate situations who might just be able to dig themselves out of an awful hole by having a baby for someone else, Gestational surrogate pregnancies also carry higher risks of complications - for the woman's health, the baby's health and consequent costs to the NHS. These consequences will always and only fall on women.

Wealthy people benefit. Particularly, the recent rise in demand for surrogacy has been driven by gay male couples. I have no problem with altruistic surrogacy for anyone, the problem I have is with what adding payment to that does to the balance of power (wealthy men paying financially disadvantaged women for use of their bodies) and that it is buying and selling women's bodies. This says a lot about our society and where our priorities lie.

Short Form Questionnaire: Law Commissions' Surrogacy Consultation



Law

Commission

Reforming the law



Scottish Law Commission

promoting law reform

This form is an extract of the longer form for comments and responses to the Law Commission's and the Scottish Law Commission's consultation about reforming surrogacy law. If you would like to respond to the full version of our consultation questionnaire, please use the online form: <https://consult.justice.gov.uk/law-commission/surrogacy>. Please see our websites for further details, and for links to download the full consultation paper: <https://www.lawcom.gov.uk/project/surrogacy/> and <https://www.scotlawcom.gov.uk/law-reform/law-reform-projects/joint-projects/surrogacy/>.

We have selected 46 questions which may be of particular interest of **those with lived experience of surrogacy arrangements**: surrogates, intended parents, family members and adult children born of surrogacy arrangements. You do not need to answer all the questions if you do not want to, and you can write as much or as little as you would like in response to our questions.

Please note that we may publish or disclose information you provide us in response to this consultation, including personal information. We ask consultees, when providing their responses, if they could avoid including personal identifying information in the text of their response, particularly where this may reveal the identities of other people involved in their surrogacy arrangement.

For more information about how we consult and how we may use responses to the consultation, please see [page i – ii of the Consultation Paper](#).

HOW TO SUBMIT YOUR RESPONSE USING THIS QUESTIONNAIRE

Type your response into the text fields below and then save your completed form. When you have completed your response, email the completed form as an attachment to surrogacy@lawcommission.gov.uk.

The closing date for submitting a response to our consultation is 11 October 2019.

QUESTIONS ABOUT YOU

What is your name?

If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation? Surrogacy UK

Are you responding to this consultation in a personal capacity or on behalf of your organisation?
Personal

If responding to this consultation in a personal capacity, which term below best describes you?
Surrogate

What is your email address?

What is your telephone number?

If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our [privacy notice](#), we take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Click or tap here to enter text.

Question No.	Consultation Question
Q1	Consultation Question 7. In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have: (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth, (2) complied with procedural safeguards for the agreement, and (3) met eligibility requirements, on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object. Do consultees agree?
Your Response to Q1	Yes, I agree. But I believe that the right to object should not revert the parenthood back to the surrogate immediately. The child should stay with the IPs pending an investigation and court proceedings into the next steps and outcome in the best interest of the child. A right to object with no stipulations on that does not protect the IPs much at all, but I do believe that the opportunity to object does protect the surrogate in some ways, particularly those who could have been exploited.
Q2	Consultation Question 11.

	We provisionally propose that: (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child; (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and (3) the defined period should be the applicable period for birth registration less one week. Do consultees agree?
Your Response to Q2	Yes I do. I believe that the right to object should not revert the parenthood back to the surrogate immediately. The child should stay with the IPs pending an investigation and court proceedings into the next steps and outcome in the best interest of the child. A right to object with no stipulations on that does not protect the IPs much at all, but I do believe that the opportunity to object does protect the surrogate in some ways, particularly those who could have been exploited.
Q3	Consultation Question 12. We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that: (1) the surrogate will be the legal parent of the child; (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood. Do consultees agree?
Your Response to Q3	Agreed, unless the surrogate's concern is a social services matter (serious concern regarding parenting, lifestyle choices of IPs etc.), in which case SS should step in to decide where is best to place the child (could be foster care).
Q4	Consultation Question 15. We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child. Do consultees agree? We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

Your Response to Q4	No, the surrogate's spouse should never be the second parent. It is archaic and not appropriate.
Q5	Consultation Question 27. We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway: (1) the intended parents should acquire parental responsibility on the birth of the child; and (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order. Do consultees agree?
Your Response to Q5	Yes, I agree.
Q6	Consultation Question 28. We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?
Your Response to Q6	Yes
Q7	Consultation Question 29. For all surrogacy arrangements, we invite consultees' views as to: (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.
Your Response to Q7	I think it should be relied upon that the IPs will care for the baby from birth, but if the surrogate is objecting then if she is not letting te IPs care for it, then it should go into foster care whilst it is being arranged. Not sure on this one, it is complicated and so unlikely.
Q8	Consultation Question 55. We provisionally propose that:

	(1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available; (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances: (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or (b) following a determination by the court that the child should live with the intended parents; and (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007. Do consultees agree?
Your Response to Q8	Yes
Q9	Consultation Question 30. We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?
Your Response to Q9	Yes
Q10	Consultation Question 32. We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway. We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.
Your Response to Q10	I think that surrogacy is safer when regulated, and therefore is safer through using an organisation which has shown to run in a safe and effective way (not just claimed to be an organisation). However, if independent groups can prove that they have followed all procedures correctly then they should be allowed to do so. Perhaps there could be some legal paperwork which needs submitting to prove these procedures prior to conception for the new framework to be considered, or they would have to use the PO old model.
Q11	Consultation Question 67. We provisionally propose that, as a condition of being eligible for entry into the new pathway: (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway

	should be required to attend counselling with regard to the implications of entering into that arrangement; and (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15. Do consultees agree?
Your Response to Q11	Yes
Q12	Consultation Question 68. We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?
Your Response to Q12	No, I think this could be provided via an organisation as well. All members of SUK for example, are only accepted as members once they are made aware of all the legal aspects. Paying lawyers seems unnecessary and costly.
Q13	Consultation Question 88. We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate. Do consultees agree? We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle. Do consultees agree?
Your Response to Q13	Yes. Her body rights should NEVER be held to ransom. If the baby is in her body then she has autonomy over that, if IPs do not trust her decision-making then they should not put their baby in her body.
Q14	Consultation Question 42. We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?
Your Response to Q14	I do, as long as it remains not-for-profit.
Q15	Consultation Question 62.

	We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity: (1) for cases under the new pathway to parenthood; and/or (2) for cases where a post-birth parental order application is made. We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.
Your Response to Q15	I do not feel that we should have a medical necessity, if a woman chooses to carry for somebody else for no reason then that is her choice. But as long as this remains non-commercial then I cannot understand why anybody would choose to do so. However, if commercial surrogacy ever became legal (I hope not), then it should be with medical need, or we risk serious financial exploitation of low income surrogates.
Q16	Consultation Question 70. We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.
Your Response to Q16	No, lots of childless women are excellent surrogates. I know many.
Q17	Consultation Question 33. We provisionally propose that: (1) there should be regulated surrogacy organisations; (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation. Do consultees agree?
Your Response to Q17	Absolutely! I have many concerns over how COTS is run, for example. They all need to be held to account.
Q18	Consultation Question 35. We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?
Your Response to Q18	Yes, definitely.
Q19	Consultation Question 37. We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

	Do consultees agree? We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.
Your Response to Q19	Yes
Q20	Consultation Question 59. We provisionally propose that the new pathway – (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility. Do consultees agree? We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements. We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements. Do consultees agree?
Your Response to Q20	Yes
Q21	Consultation Question 46. We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?
Your Response to Q21	Yes
Q22	Consultation Question 47. We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors. Do consultees agree?

	We provisionally propose that: (1) the register should be maintained by the Authority; (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include: (a) identifying information about all the parties to the surrogacy arrangement, and (b) non-identifying information about those who have contributed gametes to the conception of the child; and (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies. Do consultees agree?
Your Response to Q22	Yes, it is the child's right.
Q23	Consultation Question 48. We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.
Your Response to Q23	I am not sure this is necessary.
Q24	Consultation Question 49. We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request. Do consultees agree? We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances: (1) where his or her legal parents have consented; (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or (3) in any other circumstances.

Your Response to Q24	Yes.I Hopefully they are all still in contact, but where IPs have cut contact, the child has a right to knowledge about their origins.
Q25	Consultation Question 51. We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so. Do consultees agree? We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.
Your Response to Q25	Yes, if genetically related. I do not think that those not genetically related have a right to know whose womb they shared, it is not in their best interest and in this case, the surrogate's right to privacy on that matter trumps the curiosity of the child, in my opinion.
Q26	Consultation Question 52. We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so: (1) if they are genetically related through the surrogate; and/or (2) if they are not genetically related through the surrogate.
Your Response to Q26	Only if genetically related.
Q27	Consultation Question 53. For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.
Your Response to Q27	No.
Q28	Consultation Question 72. We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be: (1) based on an allowance; (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or

	(3) based on costs actually incurred by the surrogate, and only on production of receipts.
Your Response to Q28	2, 3 is a good idea but not always realistic, many costs are not receiptable (time off work etc.). Should still be based on trust and estimated in advance, as presently.
Q29	Consultation Question 73. We invite consultees' views as to: (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and (2) the types of expenditure which should be considered "essential".
Your Response to Q29	It is not always about essential, sometimes it is about comfort and being able to maintain the status quo to avoid additional pressure on my family and especially my children. For example, I have a fortnightly house clean on expenses. If I were pregnant with my own child I may have this, or we may manage ourselves. But my husband taking on cleaning whilst I am unwell would add extra stress in our home, or me doing it whilst not well able would add to my physical exhaustion, so the impact on the home is reduced by having this non-essential, but very helpful, expense. And necessity of an expense will depend very much on the individual family, especially if they are a one-parent family etc. It is individual and surrogates should not feel under pressure to justify everything, we are not criminals.
Q30	Consultation Question 74. We invite consultees' views as to: (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and (2) the types of expenditure which should be considered additional, rather than essential.
Your Response to Q30	Yes, additional hospital stays, unexpected CS recovery, additional childcare if needed. At SUK they recommend a 10% contingency fund, just in case.
Q31	Consultation Question 75. We invite consultees' views as to: (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and (2) the types of cost which should be included within this category.
Your Response to Q31	All costs
Q32	Consultation Question 76.

	We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).
Your Response to Q32	If she is unable to claim SMP or MA, or to cover any shortfall.
Q33	Consultation Question 77. We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings: (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or (2) other lost potential earnings (as defined in paragraph 15.36 above).
Your Response to Q33	Yes
Q34	Consultation Question 78. We invite consultees to share their experiences: (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.
Your Response to Q34	This should be made clearer to welfare that it is not a payment, but expenses, so that these are not impacted. There should be a form or something to avoid this. No personal experience.
Q35	Consultation Question 79. We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following: (1) pain and inconvenience arising from the pregnancy and childbirth; (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

	We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation. We invite consultees' views as to whether the level of compensation payable should be: (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or (2) left to the parties to negotiate.
Your Response to Q35	Not a fixed fee, it depends on her individual expenses needs, but I think there should be expenses considered and included for counselling. Loss is very traumatic for surrogates too.
Q36	Consultation Question 80. We invite consultees views' as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.
Your Response to Q36	Not directly, but they must have a significant life insurance policy in place which they are funding.
Q37	Consultation Question 81. We invite consultees' views as to whether: (1) intended parents should be able to buy gifts for the surrogate; and (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.
Your Response to Q37	Yes they should, but perhaps put a cap on the cost. Usually IPs just get us sweet little 'thinking of you' gifts, but my IPs' parents once bought us £100 of cinema tickets to help with occupying the kids, which was very thoughtful and not excessive, in my opinion. I think if gifts were over £1000 or something, then that could be considered towards payment. I think the recuperation break is essential and sensible as an additional expense/cost.
Q38	Consultation Question 82. We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be: (1) any sum agreed between the parties to the surrogacy; or (2) a fixed fee set by the regulator. We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

	(1) no other payments; (2) essential costs relating to the pregnancy; (3) additional costs relating to the pregnancy; (4) lost earnings; (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or (6) gifts.
Your Response to Q38	No payment. Absolutely not. We don't want to be paid, it tarnishes what we are doing and makes it transactional. It puts women in danger of exploitation.
Q39	Consultation Question 84. We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?
Your Response to Q39	Yes, but only as expenses.
Q40	Consultation Question 85. We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.
Your Response to Q40	Emotional wellbeing needs, counselling etc.
Q41	Consultation Question 92. We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?
Your Response to Q41	Yes
Q42	Consultation Question 94. We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

	Do consultees agree? We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules. Do consultees agree? We provisionally propose that: (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate. Do consultees agree? We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.
Your Response to Q42	Yes
Q43	Consultation Question 95. We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?
Your Response to Q43	Yes
Q44	Consultation Question 97. We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?
Your Response to Q44	Yes, but let's try to make UK surrogacy more desirable through regulation so that we can avoid the ethical concerns with persuing surrogacy in less regulated countries, where women may be exploited.
Q45	Consultation Question 99. We provisionally propose that:

	the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law. Do consultees agree?
Your Response to Q45	Yes
Q46	Consultation Question 107. We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area. We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales. We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.
Your Response to Q46	The new government guidelines are helpful and should be sent to all trusts to use as the baseline for their trust surrogacy guidelines. We need to make sure that surrogacy teams are not being referred to social services without any specific safeguarding concerns. I feel that as surrogacy becomes more common in the UK, healthcare providers will get better at providing a good service.

END OF QUESTIONNAIRE – HOW TO SUBMIT

Thank you for completing this form. To submit it as a formal response to the Law Commission, save your completed form and email it as an attachment to surrogacy@lawcommission.gov.uk. Please note that the deadline for responding to our consultation is **11 October 2019**.

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 23:19:15

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Other individual

5 What is your email address?

Email address:

6 What is your telephone number?

Telephone number:

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

Allocation to a circuit judge or higher

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

No

Please provide your views below:

The child and their birth mother's best interests must be taken into account when making any decisions about parental responsibility.

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Not Answered

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

No

Please provide your views below:

I strongly disagree. The birth mother should have legal parenthood from birth in all situations. Only when the mother has recovered from birth should she be asked whether she is happy for anyone else to have legal responsibility. Being pregnant and giving birth is life changing. No one should have to give up a child they have carried unless there has been a lot of thought after the birth. Mothers need time to recover before making that decision.

15 Consultation Question 8:

Other

Please provide your views below:

I disagree both with the proposed new pathway and the concept of surrogacy organisations.

Not Answered

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Other

Please provide your views below:

There should be no surrogacy organisations.

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

I strongly object to the proposed new pathway.

18 Consultation Question 11:

No

Please provide your views below:

The birth mother should automatically be the legal mother from birth. The time immediately after birth can be very difficult. I was quite unwell after I gave birth. It is not the time to make such a decision. Any such decision should have a legal assessment to ensure the mother understands what she is doing.

19 Consultation Question 12:

Other

Please provide your views below:

I strongly object to the proposed new pathway. The birth mother should be the legal parent from birth, along with her partner or spouse. Only she should be able to make the decision to give up her baby, under the supervision of the court. There should be no legal way to force her to do so because someone else has contributed sperm or an egg.

20 Consultation Question 13:

No

Please provide your views below:

I strongly object to the proposed new pathway. The birth mother should be the legal parent from birth, along with her partner or spouse. This should not change for a stillbirth.

21 Consultation Question 14:

No

Please provide your views below:

We are talking about a baby, not a manufactured object going through production quality control. All decisions about legal parenthood through surrogacy should be supervised by a court after birth.

22 Consultation Question 15:

No

Please provide your views below:

I strongly disagree with the new pathway.

Yes

Please share your views below:

A child born through surrogacy should not be treated differently to other babies.

23 Consultation Question 16:

No

Please provide your views below:

I strongly object to the proposed new pathway. The birth mother should be the legal parent from birth, along with her partner or spouse.

No

Please provide your views below:

The birth mother should be the legal parent from birth, along with her partner or spouse.

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

No

Please provide your views below:

The birth mother should be the legal parent from birth, along with her partner or spouse. The birth registration should reflect that.

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

I strongly disagree with the proposed new pathway.

26 Consultation Question 19:

No

Please provide your views below:

I strongly disagree with the new pathway. The birth mother should be the legal parent from birth, along with her partner or spouse. The birth registration should reflect that.

Please provide your views below:

The birth mother should be the legal parent from birth, along with her partner or spouse. The birth registration should reflect that.

27 Consultation Question 20:

Yes

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

The birth mother should be the legal parent from birth, along with her partner or spouse. The birth registration should reflect that. All decisions about legal parenthood through surrogacy should be supervised by a court after birth.

29 Consultation Question 22:

Please provide your views below:

I strongly oppose the proposed new pathway. The birth mother should be the legal parent from birth, along with her partner or spouse. The birth registration should reflect that. All decisions about legal parenthood through surrogacy should be supervised by a court after birth.

30 Consultation Question 23:

Please provide your views below:

In a dispute only the best interests of the child should be considered. Any parental input should be from the birth mother.

31 Consultation Question 24:

Please provide your views below:

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

No.. The birth mother should be the legal parent from birth, along with her partner or spouse. All decisions about legal parenthood through surrogacy should be supervised by a court after birth.

33 Consultation Question 26:

No

Please provide your views below:

The birth mother should be the legal parent from birth, along with her partner or spouse. All decisions about legal parenthood through surrogacy should be supervised by a court after birth.

34 Consultation Question 27:

No

Please provide your views below:

I strongly oppose the proposed new pathway. The birth mother should be the legal parent from birth, along with her partner or spouse. All decisions about legal parenthood through surrogacy should be supervised by a court after birth.

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Other

Please provide your views below:

I strongly oppose the proposed new pathway. The birth mother should be the legal parent from birth, along with her partner or spouse. All decisions about legal parenthood through surrogacy should be supervised by a court after birth.

36 Consultation Question 29:

Please provide your views below:

I strongly oppose the proposed new pathway. The birth mother should be the legal parent from birth, along with her partner or spouse. The birth registration should reflect that. All decisions about legal parenthood through surrogacy should be supervised by a court after birth.

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

No

Please provide your views below:

I strongly oppose the proposed new pathway.

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

39 Consultation Question 32:

Please provide your views below:

I strongly oppose the proposed new pathway.

Please provide your views below:

I strongly oppose the proposed new pathway.

40 Consultation Question 33:

No

Please provide your views below:

This is akin to trafficking in babies.

Other

Please provide your views below:

There should be no surrogacy organisations. We should not encourage baby trafficking.

Other

Please provide your views below:

There should be no surrogacy organisations.

41 Consultation Question 34:

Please provide your views below:

There should be no surrogacy organisations. We should not condone the commercial sale of babies and unnecessarily danger to women through pregnancy.

Please provide your views below:

There should be no surrogacy organisations.

Please provide your views below:

There should be no surrogacy organisations.

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Other

Please provide your views below:

There should be no surrogacy organisations. We should not commercialise pregnancy and babies.

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

There should be no surrogacy organisations. We should not commercialise pregnancy and babies.

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Other

Please provide your views below:

There should be no surrogacy organisations. We should not commercialise pregnancy and babies.

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

I strongly oppose the proposed new pathway. There should be no surrogacy organisations. We should not commercialise pregnancy and babies.

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

I strongly oppose the proposed new pathway. There should be no surrogacy organisations. We should not commercialise pregnancy and babies. Offering these services should be a criminal offence.

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Other

Please provide your views below:

I strongly oppose the proposed new pathway. There should be no surrogacy organisations. We should not commercialise pregnancy and babies.

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Yes

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

We should not commercialise pregnancy and babies. It can lead to human trafficking, babies being bought and the buyers believing they own the child for which they have paid.

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

We should not commercialise pregnancy and babies.

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Other

Please provide your views below:

I strongly disagree with the proposed new pathway. The birth certificate should have the child's birth mother's name.

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

The birth registration system doesn't need reform.

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

55 Consultation Question 47:

Yes

Please provide your views below:

Other

Please provide your views below:

I Strongly oppose the proposed new pathway. We should not commercialise pregnancy and babies. If a surrogacy does take place then the child should have full access to all details.

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

57 Consultation Question 49:

Yes

Please provide your views below:

Please provide your views below:

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

Yes

59 Consultation Question 51:

Yes

Please provide your views below:

Please provide your views below:

Yes

60 Consultation Question 52:

Please provide your views below:

Yes

Please provide your views below:

Yes

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

No

63 Consultation Question 55:

No

Please provide your views below:

No

Please provide your views below:

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

Other

Please provide your views below:

I strongly disagree with the proposed new pathway. In any uk based surrogacy arrangement the parties should all be domiciled in the uk.

Please provide your views below:

65 Consultation Question 57:

Please provide your views below:

The qualifying categories should not be changed.

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Other

Please provide views below:

I strongly oppose the proposed new pathway.

67 Consultation Question 59:

No

Please provide views below:

I strongly oppose the proposed new pat. Any surrogacy arrangement should have a genetic link. There are no circumstances in which having a child is a medical necessity.

Please provide views below:

I strongly oppose the proposed new pathway.

Other

Please provide views below:

I strongly oppose the proposed new pathway. In the current arrangement a genetic link should be retained.

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

No

Please provide your views below:

I strongly oppose the proposed new pathway. The current arrangements should continue.

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

No

Please provide views below:

Having a child is never a medical necessity.

70 Consultation Question 62:

Please provide your views below:

Having a child is never a medical necessity.

Please provide your views below:

Having a child is never a medical necessity.

71 Consultation Question 63:

Other

Please provide your views below:

I strongly oppose the proposed new pathway. For any surrogacy the child should be able to access full details of their genetic parents.

Please provide your views below:

Yes

Please provide your views below:

I strongly oppose the proposed new pathway. However any surrogacy arrangement should be registered.

72 Consultation Question 64:

No

Please provide your views below:

There should be an age limit of 50 for both proposed parents.

Please provide your views below:

There should be an age limit of 50 for both proposed parents.

Other

Please provide your views below:

I strongly oppose the proposed new pathway. For any surrogacy arrangement the minimum age of the surrogate should be 25.

73 Consultation Question 65:

Other

Please provide your views below:

I strongly oppose the proposed new pathway. For any surrogacy arrangement the minimum age of the surrogate should be 25.

Other

Please provide your views below:

I strongly oppose the proposed new pathway. For any surrogacy arrangement the minimum age of the surrogate should be 25.

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Other

Please provide your views below:

I strongly oppose the proposed new pathway.

Please provide your views below:

75 Consultation Question 67:

Other

Please provide your views below:

I strongly oppose the proposed new pathway

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Other

Please provide your views below:

I strongly oppose the proposed new pathway

77 Consultation Question 69:

Other

Please provide your views below:

I strongly oppose the proposed new pathway

Please provide your views below:

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

I strongly oppose the proposed new pathway. Any surrogate should have given birth before becoming a surrogate. They need to understand what it means to be pregnant and give birth.

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

No

Please provide your views below:

I strongly oppose the proposed new pathway. A surrogate should not be accepted into any arrangement if they have had 3 or more previous births.

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

Not Answered

Please provide your views below:

There should be no paid surrogate arrangements. Being pregnant and giving birth should not be a commercial arrangement. If we have any surrogacy arrangements then only essential costs should be covered and there must be proof the cost was necessary and how much it was. The surrogate should not profit financially- if necessary they should have to cover costs themselves to ensure this is not a money driven transaction. Babies should not be sold under any circumstances.

81 Consultation Question 73:

Please provide your views below:

The only essential costs allowed should be travel within the UK to medical appointments and extra food/vitamins, backed by receipts.

82 Consultation Question 74:

Please provide your views below:

No additional costs, gifts or fees should be paid to the surrogate. The only essential costs allowed should be travel within the UK to medical appointments and extra food/vitamins, backed by receipts. If anything the surrogate should incur costs they pay themselves to ensure there is no financial incentive to have or give up their baby.

83 Consultation Question 75:

Please provide your views below:

No additional costs, gifts or fees should be paid to the surrogate. The only essential costs allowed should be travel within the UK to medical appointments and extra food/vitamins, backed by receipts. If anything the surrogate should incur costs they pay themselves to ensure there is no financial incentive to have or give up their baby.

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

No additional costs, gifts or fees should be paid to the surrogate. The only essential costs allowed should be travel within the UK to medical appointments and extra food/vitamins, backed by receipts. If anything the surrogate should incur costs they pay themselves to ensure there is no financial incentive to have or give up their baby.

85 Consultation Question 77:

Please provide your views below:

No additional costs, gifts or fees should be paid to the surrogate. The only essential costs allowed should be travel within the UK to medical appointments and extra food/vitamins, backed by receipts. If anything the surrogate should incur costs they pay themselves to ensure there is no financial incentive to have or give up their baby.

86 Consultation Question 78:

Please provide your views below:

No additional costs, gifts or fees should be paid to the surrogate. The only essential costs allowed should be travel within the uk to medical appointments and extra food/vitamins, backed by receipts. If anything the surrogate should incur costs they pay themselves to ensure there is no financial incentive to have or give up their baby.

87 Consultation Question 79:

Please provide your views below:

No additional costs, gifts or fees should be paid to the surrogate. The only essential costs allowed should be travel within the uk to medical appointments and extra food/vitamins, backed by receipts. If anything the surrogate should incur costs they pay themselves to ensure there is no financial incentive to have or give up their baby.

Given you recognise the severe effects a pregnancy can have on a woman, why would we ever sanction this happening as a commercial arrangement?

Please provide your views below:

No additional costs, gifts or fees should be paid to the surrogate. The only essential costs allowed should be travel within the uk to medical appointments and extra food/vitamins, backed by receipts. If anything the surrogate should incur costs they pay themselves to ensure there is no financial incentive to have or give up their baby.

Not Answered

Please provide your views below:

No additional costs, gifts or fees should be paid to the surrogate. The only essential costs allowed should be travel within the uk to medical appointments and extra food/vitamins, backed by receipts. If anything the surrogate should incur costs they pay themselves to ensure there is no financial incentive to have or give up their baby.

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

No additional costs, gifts or fees should be paid to the surrogate. The only essential costs allowed should be travel within the uk to medical appointments and extra food/vitamins, backed by receipts. If anything the surrogate should incur costs they pay themselves to ensure there is no financial incentive to have or give up their baby.

89 Consultation Question 81:

Please provide your views below:

No additional costs, gifts or fees should be paid to the surrogate. The only essential costs allowed should be travel within the uk to medical appointments and extra food/vitamins, backed by receipts. If anything the surrogate should incur costs they pay themselves to ensure there is no financial incentive to have or give up their baby.

90 Consultation Question 82:

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

Please provide your views below:

No non-essential costs, or gifts or fees should be paid to the surrogate. The only essential costs allowed should be travel within the uk to medical appointments and extra food/vitamins, backed by receipts. If anything the surrogate should incur costs they pay themselves to ensure there is no financial incentive to have or give up their baby.

Not Answered

Please provide your views below:

No non-essential costs, or gifts or fees should be paid to the surrogate. The only essential costs allowed should be travel within the uk to medical appointments and extra food/vitamins, backed by receipts. If anything the surrogate should incur costs they pay themselves to ensure there is no financial incentive to have or give up their baby.

Please provide any views below:

There should be no commercial surrogacy in the uk. No non-essential costs, or gifts or fees should be paid to the surrogate. The only essential costs allowed should be travel within the uk to medical appointments and extra food/vitamins, backed by receipts. If anything the surrogate should incur costs they pay themselves to ensure there is no financial incentive to have or give up their baby.

91 Consultation Question 83:

Please provide views below:

There should be no commercial surrogacy in the uk. You are suggesting that only proposed parents should only pay what they 'agreed' for a live baby. That is buying a human being. The word for that is slavery.

Not Answered

Please provide your views below:

There should be no commercial surrogacy in the uk.

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Other

Please provide your views below:

I strongly oppose the proposed new pathway. There should be no commercial surrogacy in the uk.

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

There should be no commercial surrogacy in the uk.

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

There should be no commercial surrogacy in the uk. No non-essential costs, or gifts or fees should be paid to the surrogate. The only essential costs allowed should be travel within the uk to medical appointments and extra food/vitamins, backed by receipts. If anything the surrogate should incur costs they pay themselves to ensure there is no financial incentive to have or give up their baby.

95 Consultation Question 87:

Please provide your views below:

I strongly oppose the proposed new pathway. There should be no commercial surrogacy in the uk. No non-essential costs, or gifts or fees should be paid to the surrogate. The only essential costs allowed should be travel within the uk to medical appointments and extra food/vitamins, backed by receipts. If anything the surrogate should incur costs they pay themselves to ensure there is no financial incentive to have or give up their baby.

96 Consultation Question 88:

Other

Please provide your views below:

I strongly oppose the proposed new pathway. There should be no commercial surrogacy in the uk. No non-essential costs, or gifts or fees should be paid to the surrogate. The only essential costs allowed should be travel within the uk to medical appointments and extra food/vitamins, backed by receipts. If anything the surrogate should incur costs they pay themselves to ensure there is no financial incentive to have or give up their baby.

Other

Please provide your views below:

I strongly oppose the proposed new pathway. There should be no commercial surrogacy in the uk. No non-essential costs, or gifts or fees should be paid to the surrogate. The only essential costs allowed should be travel within the uk to medical appointments and extra food/vitamins, backed by receipts. If anything the surrogate should incur costs they pay themselves to ensure there is no financial incentive to have or give up their baby.

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

100 Consultation Question 92: We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?

No

Please provide your views below:

This is human trafficking. We should not support it.

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

102 Consultation Question 94:

No

Please provide your views below:

This is trafficking in babies. Don't dress it up in fancy language.

No

Please provide your views below:

Yes

Please provide your views below:

Yes

Please provide your views below:

Please provide your views below:

No

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

No

Please provide your views below:

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Yes

Please provide your views below:

Any guide should also explain why a child taken from its birth mother and country may not thank them when they grow up.

106 Consultation Question 98: We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood. Do consultees agree?

Other

Please provide your views below:

I strongly oppose the proposed new pathway.

107 Consultation Question 99:

No

Please provide your views below:

All surrogacy arrangements should be supervised by a court official even if international. The UK should always act in the best interest of the child regardless of the law in other countries.

108 Consultation Question 100:

Please provide your views below:

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

No

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

No

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

No reform is needed.

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

No change is needed.

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

No reform necessary.

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

No reform is necessary.

115 Consultation Question 107:

Please provide your views below:

Health care professionals should be on the lookout for coercion.

Please provide your views below:

It should be made very clear that any surrogate can change her mind at any time, that she need make no decision until well after the birth, and that any change in legal parenthood will be assessed by an impartial court official.

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

The birth mother being the legal parent at birth is the correct social arrangement. Proposed parents should accept the birth mother needs time after the birth to consider whether she wants to go through with the arrangements.

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

A genetic link should be part of any surrogacy arrangement.

Please provide your views below:

There is never a medical necessity for someone to have a child.

122 Consultation Question 114:

Please provide your views below:

There should be no commercial surrogacy in the uk.

123 Consultation Question 115:

Please provide your views below:

I do not think we should have commercial surrogacy in the uk.

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Babies are humans. They should never be part of a commercial transaction.

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

n/a

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Other individual

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[REDACTED]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential.

As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Consultation Question 3.

- 1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

- 1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

- 1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

- 1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and

parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth

and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

- 1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

- 1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:
- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
 - (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

- 1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

- 1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

- 1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

- 1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

- 1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 23:27:31

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

N/A

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Other individual

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

No

Please provide your views below:

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Yes

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

No

Please provide your views below:

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

15 Consultation Question 8:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

Not Answered

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway.'

18 Consultation Question 11:

No

Please provide your views below:

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

19 Consultation Question 12:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

20 Consultation Question 13:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

21 Consultation Question 14:

No

Please provide your views below:

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

22 Consultation Question 15:

No

Please provide your views below:

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

Yes

Please share your views below:

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

23 Consultation Question 16:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

No

Please provide your views below:

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the

effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

No

Please provide your views below:

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

26 Consultation Question 19:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

Please provide your views below:

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

27 Consultation Question 20:

Yes

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

29 Consultation Question 22:

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

30 Consultation Question 23:

Please provide your views below:

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

31 Consultation Question 24:

Please provide your views below:

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

33 Consultation Question 26:

No

Please provide your views below:

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

34 Consultation Question 27:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Other

Please provide your views below:

I agree that the birth mother should have parental responsibility for the child but NOT that the 'intended parents' should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women's reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

36 Consultation Question 29:

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

N/A

39 Consultation Question 32:

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

40 Consultation Question 33:

No

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children

Other

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Other

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

41 Consultation Question 34:

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Other

Please provide your views below:

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Other

Please provide your views below:

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Yes

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

55 Consultation Question 47:

Yes

Please provide your views below:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

57 Consultation Question 49:

Yes

Please provide your views below:

Please provide your views below:

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

YES, this should be possible.

59 Consultation Question 51:

Yes

Please provide your views below:

Please provide your views below:

YES, I agree.

60 Consultation Question 52:

Please provide your views below:

YES to both (1) and (2)

Please provide your views below:

YES to both (1) and (2)

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

No

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child

63 Consultation Question 55:

No

Please provide your views below:

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

No

Please provide your views below:

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism

65 Consultation Question 57:

Please provide your views below:

The qualifying categories of relationship should not be reformed or removed.

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Other

Please provide views below:

I profoundly disagree with the proposals for the 'new pathway'.

67 Consultation Question 59:

No

Please provide views below:

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Please provide views below:

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

Yes

Please provide views below:

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

No

Please provide your views below:

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity'

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

No

Please provide views below:

I dispute that surrogacy is ever a 'medical necessity.'

70 Consultation Question 62:

Please provide your views below:

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

Please provide your views below:

I dispute that surrogacy is ever a 'medical necessity.'

71 Consultation Question 63:

Other

Please provide your views below:

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

Please provide your views below:

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

Yes

Please provide your views below:

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

72 Consultation Question 64:

No

Please provide your views below:

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

73 Consultation Question 65:

Other

Please provide your views below:

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Other

Please provide your views below:

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

Please provide your views below:

75 Consultation Question 67:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

77 Consultation Question 69:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.r the 'new pathway'.

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.Do consultees agree?

No

Please provide your views below:

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

Not Answered

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

81 Consultation Question 73:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

82 Consultation Question 74:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

83 Consultation Question 75:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

85 Consultation Question 77:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

86 Consultation Question 78:

Please provide your views below:

N/A

87 Consultation Question 79:

Please provide your views below:

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Not Answered

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

89 Consultation Question 81:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

90 Consultation Question 82:

Not Answered

Please provide your views below:

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

Not Answered

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor

women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

Please provide any views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

91 Consultation Question 83:

Please provide views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Not Answered

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Other

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

95 Consultation Question 87:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

96 Consultation Question 88:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

N/A

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:

N/A

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

N/A

100 Consultation Question 92: We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?

No

Please provide your views below:

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

N/A

102 Consultation Question 94:

No

Please provide your views below:

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

No

Please provide your views below:

Yes

Please provide your views below:

Yes

Please provide your views below:

Please provide your views below:

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

No

Please provide your views below:

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

N/A

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Other

Please provide your views below:

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

106 Consultation Question 98: We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

107 Consultation Question 99:

No

Please provide your views below:

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

108 Consultation Question 100:

Please provide your views below:

N/A

Please provide your views below:

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

I do not believe this needs changing.

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

No

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

115 Consultation Question 107:

Please provide your views below:

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself. There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other countries.

Please provide your views below:

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

Please provide your views below:

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

N/A

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

N/A

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

N/A

Please provide your views below:

N/A

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

N/A

123 Consultation Question 115:

Please provide your views below:

N/A

Please provide your views below:

N/A

124 Consultation Question 116:

Not Answered

Please provide your views below:

N/A

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them

but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

□ *The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.

□

*All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.

□ *The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."

□ *Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.

□ *Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

[Name of organisation if relevant.]

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response
- This is a response on behalf of an organisation
- Other

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Surrogate
- Intended parent
- Person born of a surrogacy arrangement
- Family member of a surrogate
- Family member of an intended parent
- Legal practitioner
- Medical practitioner or counsellor
- Social worker
- Academic
- Other individual

5. What is your email address?

Email address:

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[Enter your phone number here.]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

(1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and

(2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Consultation Question 8.

- 1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

- 1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

- 1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Paragraph 8.77

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:
 - (a) administrative, or
 - (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the 'intended parents' should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women's reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees' views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and
- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely to present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

- 1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

- 1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Paragraph 12.64

Consultation Question 60.

- 1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

- 1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

- 1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

- 1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

- 1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.29

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees views' as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother maybe being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself. There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother maybe being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and
- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 23:32:09

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

None

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Other individual

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

N/A

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

No

Please provide your views below:

The UN Special Rapporteur recommends (see <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>) that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Yes

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

No

Please provide your views below:

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

15 Consultation Question 8:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

Not Answered

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway.'

18 Consultation Question 11:

No

Please provide your views below:

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

19 Consultation Question 12:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

20 Consultation Question 13:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

21 Consultation Question 14:

No

Please provide your views below:

Are you insane, this could be open to such abuse.

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

22 Consultation Question 15:

No

Please provide your views below:

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

Yes

Please share your views below:

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

23 Consultation Question 16:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

No

Please provide your views below:

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents

before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

No

Please provide your views below:

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

26 Consultation Question 19:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

Please provide your views below:

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

27 Consultation Question 20:

Yes

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

29 Consultation Question 22:

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

30 Consultation Question 23:

Please provide your views below:

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

31 Consultation Question 24:

Please provide your views below:

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

33 Consultation Question 26:

No

Please provide your views below:

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

34 Consultation Question 27:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Other

Please provide your views below:

I agree that the birth mother should have parental responsibility for the child but NOT that the 'intended parents' should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women's reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

36 Consultation Question 29:

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

N/A

39 Consultation Question 32:

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

40 Consultation Question 33:

No

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Other

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Other

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

41 Consultation Question 34:

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Other

Please provide your views below:

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Other

Please provide your views below:

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women & children, and would drive an increase in surrogacy.

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Yes

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

I do not consider the birth registration system to be in need for reform.

I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

55 Consultation Question 47:

Yes

Please provide your views below:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

57 Consultation Question 49:

Yes

Please provide your views below:

Please provide your views below:

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

YES, this should be possible.

59 Consultation Question 51:

Yes

Please provide your views below:

Please provide your views below:

YES, I agree.

60 Consultation Question 52:

Please provide your views below:

Yes

Please provide your views below:

Yes

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

63 Consultation Question 55:

No

Please provide your views below:

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

No

Please provide your views below:

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

Please provide your views below:

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

65 Consultation Question 57:

Please provide your views below:

The qualifying categories of relationship should not be reformed or removed.

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Other

Please provide views below:

I profoundly disagree with the proposals for the 'new pathway'.

67 Consultation Question 59:

No

Please provide views below:

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Please provide views below:

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

Yes

Please provide views below:

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

No

Please provide your views below:

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

No

Please provide views below:

I dispute that surrogacy is ever a 'medical necessity.'

70 Consultation Question 62:

Please provide your views below:

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

Please provide your views below:

I dispute that surrogacy is ever a 'medical necessity.'

71 Consultation Question 63:

Other

Please provide your views below:

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

Please provide your views below:

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

Yes

Please provide your views below:

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

72 Consultation Question 64:

No

Please provide your views below:

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. 25 is a more appropriate age.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

73 Consultation Question 65:

Other

Please provide your views below:

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

But seriously NO... At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Other

Please provide your views below:

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

Please provide your views below:

75 Consultation Question 67:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

77 Consultation Question 69:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

No

Please provide your views below:

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

Not Answered

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

81 Consultation Question 73:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

82 Consultation Question 74:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

83 Consultation Question 75:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

85 Consultation Question 77:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

86 Consultation Question 78:

Please provide your views below:

n/a

87 Consultation Question 79:

Please provide your views below:

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Not Answered

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

89 Consultation Question 81:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

90 Consultation Question 82:

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

Not Answered

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

Please provide any views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

91 Consultation Question 83:

Please provide views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy

Not Answered

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Other

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

95 Consultation Question 87:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

96 Consultation Question 88:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

n/a

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:

n/a

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

n/a

100 Consultation Question 92: We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?

No

Please provide your views below:

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

n/a

102 Consultation Question 94:

No

Please provide your views below:

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

No

Please provide your views below:

Yes

Please provide your views below:

Yes

Please provide your views below:

Please provide your views below:

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

No

Please provide your views below:

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

n/a

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Other

Please provide your views below:

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

106 Consultation Question 98: We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'

107 Consultation Question 99:

No

Please provide your views below:

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

108 Consultation Question 100:

Please provide your views below:

n/a

Please provide your views below:

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

I do not believe this needs changing.

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

No

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

115 Consultation Question 107:

Please provide your views below:

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself. There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

Please provide your views below:

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

Please provide your views below:

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

n/a

Not Answered

If international, in which country did the arrangement take place?:

n/a

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

n/a

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

n/a

Please provide your views below:

n/a

121 Consultation Question 113:

Please provide your views below:

n/a

Please provide your views below:

n/a

122 Consultation Question 114:

Please provide your views below:

n/a

123 Consultation Question 115:

Please provide your views below:

n/a

Please provide your views below:

n/a

124 Consultation Question 116:

Not Answered

Please provide your views below:

n/a

Please provide your views below:

n/a

Please provide your views below:

n/a

Please provide your views below:

n/a

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

n/a

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

My views directly align with the following :- It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

N/A

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

- This is a personal response

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Other individual

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[REDACTED]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential.

As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Consultation Question 3.

- 1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

- 1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

- 1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

- 1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and

parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth

and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 23:41:16

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Other individual

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

I'd prefer that my full name and contact details not be published in relation to this consultation although it may be shared with other interested parties.

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

There shouldn't be a dumbing down of the seriousness of these decisions that engage serious issues of law and public policy particularly if payment is made (which it almost inevitably will be) and/or the surrogate is from a developing country (as they often are). There's a danger of these decisions becoming routinised both in the eyes of the system and prospective parents/buyers.

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

Not Answered

Please provide your views below:

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Not Answered

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

Not Answered

Please provide your views below:

I have no problem in principle with a preliminary declaration of intent particularly as regards a prospective parent with no planned biological relationship to the child, as long as the birth mother's rights aren't watered down or it bypasses policy with regards to such matters as payment, or child protection.

15 Consultation Question 8:

Yes

Please provide your views below:

Not Answered

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Not Answered

Please provide your views below:

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

18 Consultation Question 11:

No

Please provide your views below:

The surrogate should continue to retain her rights subject to free informed consent for the full period rather than reversing the burden by placing onerous requirements for her to fulfil to object particularly when considering that these women may have low legal or general literacy or may not even be in the country.

19 Consultation Question 12:

Not Answered

Please provide your views below:

20 Consultation Question 13:

Not Answered

Please provide your views below:

21 Consultation Question 14:

Not Answered

Please provide your views below:

22 Consultation Question 15:

Not Answered

Please provide your views below:

Not Answered

Please share your views below:

23 Consultation Question 16:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

Not Answered

Please provide your views below:

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

26 Consultation Question 19:

Not Answered

Please provide your views below:

Please provide your views below:

27 Consultation Question 20:

Not Answered

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

The surrogate should have the full rights of any other mother unless and until freely relinquished, and these should be recognised by the courts without prejudice. A biologically related intended parent should be able to obtain parental responsibility on the same basis as any other biological parent. A non-biologically related parent should be able to signal their intention to become a parent pre birth, and subject to child protection and public policy this should obtain them a level of standing with regards to the child. Any disputes should be resolved as would any other private family law dispute.

29 Consultation Question 22:

Please provide your views below:

30 Consultation Question 23:

Please provide your views below:

31 Consultation Question 24:

Please provide your views below:

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

33 Consultation Question 26:

Not Answered

Please provide your views below:

34 Consultation Question 27:

Not Answered

Please provide your views below:

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Not Answered

Please provide your views below:

36 Consultation Question 29:

Please provide your views below:

The surrogate should have the full rights of any other mother unless and until freely relinquished, and these should be recognised by the courts without prejudice. A biologically related intended parent should be able to obtain parental responsibility on the same basis as any other biological parent. A non-biologically related parent should be able to signal their intention to become a parent pre birth, and subject to child protection and public policy this should obtain them a level of standing with regards to the child. Any disputes should be resolved as would any other private family law dispute.

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Not Answered

Please provide your views below:

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

39 Consultation Question 32:

Please provide your views below:

Please provide your views below:

40 Consultation Question 33:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

41 Consultation Question 34:

Please provide your views below:

Please provide your views below:

Please provide your views below:

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Yes

Please provide your views below:

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Not Answered

Please provide your views below:

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

The sanctions should be criminal to provide a deterrent and allow authorities to take action against such organisations without the need for a "complaining" party, and could include exemplary fines or even imprisonment in cases of gross exploitation.

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Not Answered

Please provide your views below:

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Yes

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

Not Answered

Please provide your views below:

To a point. "Advising on" yes. Negotiating and facilitating beyond legal support could become a loophole for under the table surrogacy agencies.

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

Licensed agencies could be able to publicise themselves to potential parents to make them aware of their existence, but there shouldn't be a door opened for solicitation for surrogates particularly among potentially vulnerable women or direct unregulated arrangements between potential parents and surrogates.

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Yes

Please provide your views below:

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

The birth certification process could afford to be made more detailed to make clear the exact nature of the legal and factual relationships in situations other than straightforward biological parentage.

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Not Answered

Please provide your views below:

55 Consultation Question 47:

Yes

Please provide your views below:

Not Answered

Please provide your views below:

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

57 Consultation Question 49:

Not Answered

Please provide your views below:

Please provide your views below:

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

59 Consultation Question 51:

Not Answered

Please provide your views below:

Please provide your views below:

60 Consultation Question 52:

Please provide your views below:

Please provide your views below:

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

63 Consultation Question 55:

No

Please provide your views below:

How would this situation arise, in practice? The situation outlined implies a potentially highly exploitative arrangement with an untraceable woman (for example from a developing country without systems by which a woman could be traced.). Not being able to obtain the desired form of order would deter such arrangements whereas conversely this provision may serve to encourage them.

Not Answered

Please provide your views below:

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

Other

Please provide your views below:

With the possible exception if one of the intended parents has a strong connection to the UK and to the surrogate (for example an intra-familial arrangement).

Please provide your views below:

Otherwise than above, yes, to deter surrogacy tourism.

65 Consultation Question 57:

Please provide your views below:

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Not Answered

Please provide views below:

67 Consultation Question 59:

Not Answered

Please provide views below:

Please provide views below:

Not Answered

Please provide views below:

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

Not Answered

Please provide your views below:

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

Not Answered

Please provide views below:

70 Consultation Question 62:

Please provide your views below:

Please provide your views below:

71 Consultation Question 63:

Not Answered

Please provide your views below:

Please provide your views below:

Not Answered

Please provide your views below:

72 Consultation Question 64:

Not Answered

Please provide your views below:

Please provide your views below:

Not Answered

Please provide your views below:

This age limit could stand to be higher, perhaps 21 or older.

73 Consultation Question 65:

Not Answered

Please provide your views below:

This age limit could stand to be higher, perhaps at least 25 which is the minimum age at which people reach full emotional maturity.

Not Answered

Please provide your views below:

This age limit could stand to be higher, perhaps at least 25 which is the minimum age at which people reach full emotional maturity.

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Yes

Please provide your views below:

Please provide your views below:

75 Consultation Question 67:

Not Answered

Please provide your views below:

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Not Answered

Please provide your views below:

77 Consultation Question 69:

Yes

Please provide your views below:

Please provide your views below:

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

Yes, both for health and emotional reasons.

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

Not Answered

Please provide your views below:

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

based on an allowance;

Please provide your views below:

There should be a hard limit on this conservatively assessed as the reasonable expense of an average pregnancy barring compensation for exceptional circumstances arising.

81 Consultation Question 73:

Please provide your views below:

82 Consultation Question 74:

Please provide your views below:

83 Consultation Question 75:

Please provide your views below:

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

85 Consultation Question 77:

Please provide your views below:

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

Please provide your views below:

Please provide your views below:

a fixed fee set by the regulator (operating as a cap on the maximum payable), or

Please provide your views below:

There should be a hard limit on this conservatively assessed as the reasonable expense of an average pregnancy barring compensation for exceptional circumstances arising.

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

89 Consultation Question 81:

Please provide your views below:

They would have to be very modest indeed to avoid subverting the above provision. Any "gifting" pre-birth risks putting emotional pressure on a surrogate,

90 Consultation Question 82:

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

Please provide your views below:

Not Answered

Please provide your views below:

Please provide any views below:

91 Consultation Question 83:

Please provide views below:

Not Answered

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Yes

Please provide your views below:

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

There should not be a further drift towards commercialisation and marketisation of surrogacy. Reasonable costs should be strictly defined and enforced including by preventing the attainment of orders in the form desired after birth, and potentially further penalties like punitive fines.

95 Consultation Question 87:

Please provide your views below:

There should be fines for arranging a surrogacy outside the law, and it should be an absolute bar to receiving a parental order for an unrelated parent, although an adoption order may still be available if required in the interests of the child.

96 Consultation Question 88:

Yes

Please provide your views below:

Yes

Please provide your views below:

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

100 Consultation Question 92: We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?

Not Answered

Please provide your views below:

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

102 Consultation Question 94:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Please provide your views below:

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will

need to be completed after the birth of the child.Do consultees agree?

Not Answered

Please provide your views below:

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Not Answered

Please provide your views below:

106 Consultation Question 98: We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.Do consultees agree?

Yes

Please provide your views below:

They should not be eligible for any enhanced or fast track pathway and and post birth orders should be subject to strong scrutiny and the same policy restrictions as domestic surrogacy arrangements.

107 Consultation Question 99:

Not Answered

Please provide your views below:

108 Consultation Question 100:

Please provide your views below:

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Not Answered

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

[Name of organisation if relevant.]

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response
- ~~This is a response on behalf of an organisation~~
- ~~Other~~

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- ~~Surrogate~~
- ~~Intended parent~~
- ~~Person born of a surrogacy arrangement~~
- ~~Family member of a surrogate~~
- ~~Family member of an intended parent~~
- ~~Legal practitioner~~
- ~~Medical practitioner or counsellor~~
- ~~Social worker~~
- ~~Academic~~
- Other individual

5. What is your email address?

Email address:

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[Enter your phone number here.]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

AGREED. International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

(1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and

(2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

SUCH CASES SHOULD BE ALLOCATED TO A SENIOR AND EXPERIENCED JUDGE. All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO. The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent

authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES.

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO. I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

- 1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new

pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER. I profoundly disagree with the proposal for the 'new pathway' and therefore disagree with proposals for related 'regulated surrogacy organisations and licensed clinics'.

1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER. I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;

- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO. I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER. I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO. I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO. I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO. I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES. The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO. I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO. I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Paragraph 8.77

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO. I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER. I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

- 1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO. I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

- 1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES.

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:
 - (a) administrative, or
 - (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO. There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO. I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO. I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER: I agree that the birth mother should have parental responsibility for the child but NOT that the 'intended parents' should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women's reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees' views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and
- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER: I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO. I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

OTHER: None of the above. I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its

prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I DISAGREE with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I DISAGREE with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER: I DISAGREE with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER: I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

- 1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER: I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

- 1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

- 1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES.

Paragraph 9.129

Consultation Question 41.

1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO. I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women’s prostitution.

Paragraph 9.135

Consultation Question 42.

1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO. I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other ‘service’ organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a ‘surrogate’ mother would be a solution to an impoverished woman’s financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a ‘surrogate’ would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

- 1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES.

Paragraph 10.80

Consultation Question 44.

- 1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER: I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

- 1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Consultation Question 46.

- 1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES.

Consultation Question 47.

- 1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES.

- 1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER: I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have

access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES.

1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES.

- 1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

- 1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2).

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO. The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO. I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors

set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO. I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO. I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER: I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO: I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES.

Paragraph 12.64

Consultation Question 60.

- 1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO. I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

- 1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

- 1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

- 1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER: I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES. While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO. I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

Surrogacy is therefore particularly unethical when the ‘intended parents’ are old. If surrogacy is to be opened up, a maximum age limit for ‘intended parents’ is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees’ views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the ‘new pathway’. However, if surrogacy is to be allowed, there should be a maximum age limit for ‘intended parents’ and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. I am opposed to surrogacy per se, because it is a violation of both women’s and children’s human rights. However, it is particularly unethical when the ‘intended parents’ are old. I therefore consider that a maximum age limit for ‘intended parents’ is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER. I profoundly disagree with the proposals for the ‘new pathway’. However, if surrogacy is to be allowed, there should be a minimum age for ‘intended parents’ and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become ‘parents’ through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER:

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER, as follows:

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER: I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER: I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER: I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER: I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER: I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER: I am profoundly opposed to surrogacy and the introduction of the 'new pathway'. Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO. I am profoundly opposed to surrogacy and the introduction of the 'new pathway'. Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children. There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a TOTAL BAN on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.29

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts. I am therefore OPPOSED to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am OPPOSED to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts. I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children. There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

PROVISION SHOULD NOT BE MADE FOR A FEE TO BE PAID. I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Provision SHOULD NOT BE MADE FOR PAID SURROGACY.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

I AM OPPOSED TO PAID SURROGACY.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER: I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO.

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO. Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO.

1.125 We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES.

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO. The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO.

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A.

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER: I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit.

There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 23:56:43

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Other individual

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

No

Please provide your views below:

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Yes

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

No

Please provide your views below:

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

15 Consultation Question 8:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

Not Answered

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway.'

18 Consultation Question 11:

No

Please provide your views below:

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

19 Consultation Question 12:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

20 Consultation Question 13:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

21 Consultation Question 14:

No

Please provide your views below:

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best

interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

22 Consultation Question 15:

No

Please provide your views below:

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

Yes

Please share your views below:

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

23 Consultation Question 16:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

No

Please provide your views below:

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

No

Please provide your views below:

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

26 Consultation Question 19:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

Please provide your views below:

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

27 Consultation Question 20:

Yes

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

29 Consultation Question 22:

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

30 Consultation Question 23:

Please provide your views below:

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

31 Consultation Question 24:

Please provide your views below:

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

33 Consultation Question 26:

No

Please provide your views below:

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as recommended by the

UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

34 Consultation Question 27:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Other

Please provide your views below:

I agree that the birth mother should have parental responsibility for the child but NOT that the 'intended parents' should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women's reproductive capacities.

36 Consultation Question 29:

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

N/A

39 Consultation Question 32:

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

40 Consultation Question 33:

No

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Other

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Other

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

41 Consultation Question 34:

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Please provide your views below:

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Other

Please provide your views below:

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Other

Please provide your views below:

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Yes

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

55 Consultation Question 47:

Yes

Please provide your views below:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy

arrangement.

Please provide your views below:

I agree but with the proviso that all the information should be identifying – because otherwise it trivializes the creation of a child and denies the child the right to know her or his genetic parentage.

57 Consultation Question 49:

Yes

Please provide your views below:

Please provide your views below:

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

YES, this should be possible.

59 Consultation Question 51:

Yes

Please provide your views below:

YES, I agree.

Please provide your views below:

60 Consultation Question 52:

Please provide your views below:

YES to both (1) and (2)

Please provide your views below:

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

No.

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

63 Consultation Question 55:

No

Please provide your views below:

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

No

Please provide your views below:

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

Please provide your views below:

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

65 Consultation Question 57:

Please provide your views below:

The qualifying categories of relationship should not be reformed or removed.

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

No

Please provide views below:

I profoundly disagree with the proposals for the 'new pathway'.

67 Consultation Question 59:

No

Please provide views below:

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Please provide views below:

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

Yes

Please provide views below:

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

No

Please provide your views below:

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

No

Please provide views below:

I dispute that surrogacy is ever a 'medical necessity.'

70 Consultation Question 62:

Please provide your views below:

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

Please provide your views below:

I dispute that surrogacy is ever a 'medical necessity.'

71 Consultation Question 63:

Other

Please provide your views below:

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

Please provide your views below:

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

Yes

Please provide your views below:

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

72 Consultation Question 64:

No

Please provide your views below:

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and

adulthood?

73 Consultation Question 65:

Other

Please provide your views below:

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Other

Please provide your views below:

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

Please provide your views below:

75 Consultation Question 67:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

77 Consultation Question 69:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

No

Please provide your views below:

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

Not Answered

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

81 Consultation Question 73:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

82 Consultation Question 74:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

83 Consultation Question 75:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

85 Consultation Question 77:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

86 Consultation Question 78:

Please provide your views below:

N/A

87 Consultation Question 79:

Please provide your views below:

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Not Answered

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

89 Consultation Question 81:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

90 Consultation Question 82:

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

Not Answered

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

Please provide any views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

91 Consultation Question 83:

Please provide views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

□

Not Answered

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Other

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

95 Consultation Question 87:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally

independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

96 Consultation Question 88:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

N/A

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:

N/A

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

N/A

100 Consultation Question 92: We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?

No

Please provide your views below:

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

N/A

102 Consultation Question 94:

No

Please provide your views below:

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

No

Please provide your views below:

Yes

Please provide your views below:

Yes

Please provide your views below:

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Please provide your views below:

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

No

Please provide your views below:

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

N/A

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Other

Please provide your views below:

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

106 Consultation Question 98: We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

107 Consultation Question 99:

No

Please provide your views below:

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

108 Consultation Question 100:

Please provide your views below:

N/A

Please provide your views below:

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

I do not believe this needs changing.

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

No

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

115 Consultation Question 107:

Please provide your views below:

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's

health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself. There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other countries.

Please provide your views below:

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

Please provide your views below:

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:
N/A

Not Answered

If international, in which country did the arrangement take place?:

N/A

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

N/A

Please provide your views below:

N/A

121 Consultation Question 113:

Please provide your views below:

N/A

Please provide your views below:

N/A

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Consultation Question 118.

□ We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper. It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the ‘intended parents’ the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn’t appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women’s position relative to men’s, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their ‘parents’ not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners’ ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that ‘procreative liberty’ confers some kind of human right to surrogacy and the idea that a woman has a human right to be a ‘surrogate.’ These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the ‘new pathway’ violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother’s choice to transfer the child “must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation.”
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government’s consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women’s and children’s human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

Surrogacy Consultation Questions

Email the completed document to ***surrogacy@lawcommission.gov.uk*** before the deadline of 11 October 2019.

About You

1. What is your name?

Name (Required)

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

[Name of organisation if relevant.]

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

☐ This is a personal response

4. If responding to this consultation in a personal capacity, which term below best describes you?

☐ other

☐

5. What is your email address?

Email address:

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

We invite consultees' views as to whether, in England and Wales:

1. all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

2. if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

We invite consultees' views as to whether they are of the view that, in Scotland:

3. there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
4. it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
5. further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

6. entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
 7. complied with procedural safeguards for the agreement, and
 8. met eligibility requirements,
- on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born

and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

We provisionally propose that:

9. the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
10. this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
11. the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

12. the surrogate will be the legal parent of the child;
13. if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and

14. the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the ‘new pathway’ – particularly with the ‘intended parents’ acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child’s best interest being the paramount consideration, in accordance with the UN Special Rapporteur’s recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

We provisionally propose that, in the new pathway:

15. the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
16. if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
17. if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the ‘new pathway’ – particularly the ‘intended parents’ acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has

one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child’s best interest being the paramount consideration, in accordance with the UN Special Rapporteur’s recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

- 1.1 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:
- (1.1.1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
 - (1.1.2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
 - (1.1.3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur’s recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child’s best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child’s best interest. Therefore a welfare assessment MUST be made after the child’s birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons ‘intended parents’ do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother’s physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-

developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

- 1.1 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

18. the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
19. the surrogate should be able to consent to the intended parents being registered

as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the ‘new pathway’ – particularly the ‘intended parents’ acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the ‘intended parents’ being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Paragraph 8.77

Consultation Question 17.

We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the ‘intended parents’ being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

For surrogacy arrangements in the new pathway, we invite consultees’ views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the ‘new pathway’.

Paragraph 8.80

Consultation Question 19.

We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

1. it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 1. for an order for appointment as guardian of the child, and
 2. for a parental order in the name of the intended parents, subject to the surrogate's consent; or
2. the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

20. the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
21. if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
22. if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

We invite consultees' views as to:

23. a temporary three-parent model of legal parenthood in surrogacy cases; and
24. how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

We invite consultees' views:

3. as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
4. if so, as to whether should this oversight be:
 1. administrative, or
 2. judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

In respect of England and Wales, we invite consultees' views as to:

25. whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
26. if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

In respect of England and Wales, we invite consultees' views:

27. as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
28. what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

29. the child is living with them or being cared for by them; and
30. they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do

not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

31. the intended parents should acquire parental responsibility on the birth of the child; and
32. if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the ‘new pathway’. I do not agree that the ‘intended parents’ should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the ‘intended parents’ parental responsibility is based on (or justified by) the wishes expressed by some ‘surrogate’ mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate

should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

For all surrogacy arrangements, we invite consultees’ views as to:

- 33. whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and
- 34. whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the ‘new pathway’. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the ‘new pathway’.

Paragraph 9.29

Consultation Question 31.

We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

We provisionally propose that:

35. there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

36. there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

37. each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of

both women and children.

Paragraph 9.61

Consultation Question 34.

We provisionally propose that the person responsible must be responsible for:

- 38. representing the organisation to, and liaising with, the regulator;
- 39. managing the regulated surrogacy organisation with sufficient care, competence and skill;
- 40. ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- 41. training any staff, including that of the person responsible; and
- 42. providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a

potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be

expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a ‘surrogate’ mother would be a solution to an impoverished woman’s financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a ‘surrogate’ would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the ‘new pathway’. I do not agree that the ‘intended parents’ should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the ‘intended parents’ are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

We invite consultees’ views as to whether the birth registration system in England and Wales requires

reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

We provisionally propose that:

5. the register should be maintained by the Authority;
6. the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 1. identifying information about all the parties to the surrogacy arrangement, and
 2. non-identifying information about those who have contributed gametes to the conception of the child; and
7. to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- 43. where his or her legal parents have consented;
- 44. if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- 45. in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

We invite consultees' views as to whether there should be provision to allow people born to the same

surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- 46. if they are genetically related through the surrogate; and/or
- 47. if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

We provisionally propose that:

- 48. the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

8. the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 1. where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 2. following a determination by the court that the child should live with the intended parents; and
9. the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

We invite consultees' views on whether:

49. the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
50. the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

We provisionally propose that the new pathway –

51. should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
52. that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Paragraph 12.64

Consultation Question 60.

We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the ‘new pathway’ and believe the genetic link should be retained. I dispute that surrogacy is ever a ‘medical necessity.’

Paragraph 12.71

Consultation Question 61.

We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent’s former partner provides gametes but the intended parents’ relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a ‘medical necessity.’

Paragraph 12.76

Consultation Question 62.

We invite consultees’ views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

53. for cases under the new pathway to parenthood; and/or

54. for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women’s and children’s rights and that it should therefore be banned. I dispute that surrogacy is ever a ‘medical necessity.’

We invite consultees’ views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a ‘medical necessity.’

Paragraph 12.94

Consultation Question 63.

We provisionally propose that in order to use the new pathway to parenthood, information identifying the child’s genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child’s birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the ‘new pathway’. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

We invite consultees’ views as to whether it should be a condition for an application for a parental order that:

55. those who contributed gametes are entered on the national register of surrogacy agreements; and/or

56. if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter

into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the ‘new pathway’. However, if surrogacy is to be allowed, there should be a minimum age for ‘intended parents’ and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become ‘parents’ through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women’s and children’s human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a ‘new pathway’. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the ‘new pathway’.

We invite consultees’ views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- 57. the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- 58. the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the ‘new pathway’.

Paragraph 13.44

Consultation Question 68.

We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the ‘new pathway’.

Paragraph 13.65

Consultation Question 69.

We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the ‘new pathway’.

We invite consultees’ views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the ‘new pathway’.

Paragraph 13.73

Consultation Question 70.

We invite consultees’ views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the ‘new pathway’.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

We provisionally propose that there should not be a maximum number of surrogate pregnancies that a

woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the ‘new pathway’.

Society should not condone women undergoing multiple ‘surrogate’ pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

We invite consultees’ views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- 59. based on an allowance;
- 60. based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- 61. based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women’s reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

We invite consultees’ views as to:

- 62. whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- 63. the types of expenditure which should be considered “essential”.

I am opposed to paid surrogacy because it commercialises women’s reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and

birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

We invite consultees' views as to:

64. whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
65. the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

We invite consultees' views as to:

66. whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
67. the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.29

Consultation Question 76.

We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- 68. her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- 69. other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

We invite consultees to share their experiences:

- 70. of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- 71. where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- 72. pain and inconvenience arising from the pregnancy and childbirth;
- 73. medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- 74. specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis

can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

We invite consultees' views as to whether the level of compensation payable should be:

75.	a fixed fee set by the regulator (operating as a cap on the maximum payable), or
76.	left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

We invite consultees' views as to whether:

- 77. intended parents should be able to buy gifts for the surrogate; and
- 78. if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- 79. any sum agreed between the parties to the surrogacy; or
- 80. a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- 81. no other payments;
- 82. essential costs relating to the pregnancy;
- 83. additional costs relating to the pregnancy;
- 84. lost earnings;
- 85. compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- 86. gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- 87. in the first trimester of pregnancy only;
- 88. to any miscarriage or termination; or
- 89. some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies

children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

90. for cases within the new pathway to parenthood; and
91. for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the ‘intended parents’ to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur’s recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

We invite consultees’ views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child’s birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the ‘intended parents’ to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur’s recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

Paragraph 16.76

Consultation Question 96.

We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

We provisionally propose that:
the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but
before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

We invite consultees' views as to whether:

- 92. any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- 93. if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

We invite consultees' views as to:

94. whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
95. if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding

and that ‘intended parents’ have no legal right to override the birth mother’s wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the ‘intended parents’ are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman’s health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn’t in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of ‘attractiveness’ for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people’s thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself. There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other countries.

We invite consultees’ views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the ‘intended parents’ have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

10. when the child was born;
11. whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
12. whether the arrangement led to the making of a parental order in the UK; and

13. whether they are a:
1. opposite-sex couple;
 2. male same-sex couple;
 3. female same-sex couple;
 4. single woman; or
 5. single man.

N/A

Paragraph 18.2

Consultation Question 110.

We invite consultees who have experience of applying for a parental order in the UK to tell us:

96. whether the surrogacy arrangement was domestic or international;
97. whether they had legal advice before the making of the parental order;
98. whether they were represented by a lawyer in court; and
99. the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

100. medical screening; and
 101. implications counselling
- (where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

102. to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and
103. to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

We invite consultees to tell us of the impact of:

14. the current requirement of a genetic link; and
15. any removal of this requirement in cases of medical necessity:
 1. in the new pathway;
 2. in the parental order route for domestic surrogacy arrangements; or
 3. in both situations.

Paragraph 18.11

Consultation Question 114.

We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

104. their profession; and
105. what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

106. if particular proposals will increase accessibility, and why; and
107. if particular proposals will restrict accessibility, and why.

N/A

We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

108. if particular proposals will increase accessibility, and why; and
109. if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

We ask consultees who are intended parents to tell us:

110. whether the surrogacy arrangement was domestic or international;
111. what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
112. how they raised the funds for the surrogacy arrangement(s);
113. what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
114. how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- ☐ Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- ☐ Advance equality of opportunity between people who share a protected characteristic and those who do not.
- ☐ Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different

generations. Imagine the rage that young people may feel when they discover that their ‘parents’ not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners’ ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that ‘procreative liberty’ confers some kind of human right to surrogacy and the idea that a woman has a human right to be a ‘surrogate.’ These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the ‘new pathway’ violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- ☐ The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- ☐ All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- ☐ The birth mother’s choice to transfer the child “must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation.”
- ☐ Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- ☐ Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government’s consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women’s and children’s human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-10 23:57:05

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

no

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Other individual

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

Please provide your views below:

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

9 Consultation Question 2:

Please provide your views below:

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

No

Please provide your views below:

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Yes

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

No

Please provide your views below:

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

15 Consultation Question 8:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

Not Answered

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway.'

18 Consultation Question 11:

No

Please provide your views below:

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

19 Consultation Question 12:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

20 Consultation Question 13:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

21 Consultation Question 14:

No

Please provide your views below:

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

22 Consultation Question 15:

No

Please provide your views below:

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

Yes

Please share your views below:

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

23 Consultation Question 16:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

No

Please provide your views below:

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

No

Please provide your views below:

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

26 Consultation Question 19:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

Please provide your views below:

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

27 Consultation Question 20:

Yes

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

29 Consultation Question 22:

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

30 Consultation Question 23:

Please provide your views below:

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

31 Consultation Question 24:

Please provide your views below:

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

33 Consultation Question 26:

No

Please provide your views below:

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

34 Consultation Question 27:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Other

Please provide your views below:

I agree that the birth mother should have parental responsibility for the child but NOT that the 'intended parents' should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women's reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

36 Consultation Question 29:

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

n?A

39 Consultation Question 32:

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

40 Consultation Question 33:

No

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Other

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Other

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

41 Consultation Question 34:

Please provide your views below:

none of the ABOVE

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Other

Please provide your views below:

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Other

Please provide your views below:

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Yes

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

55 Consultation Question 47:

Yes

Please provide your views below:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

57 Consultation Question 49:

Yes

Please provide your views below:

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Please provide your views below:

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

yes this should be possible

59 Consultation Question 51:

Yes

Please provide your views below:

Please provide your views below:

yes I agree

60 Consultation Question 52:

Please provide your views below:

yes

Please provide your views below:

y7es

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

no

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

no

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

63 Consultation Question 55:

No

Please provide your views below:

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

No

Please provide your views below:

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

65 Consultation Question 57:

Please provide your views below:

The qualifying categories of relationship should not be reformed or removed.

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Other

Please provide views below:

I profoundly disagree with the proposals for the 'new pathway'.

67 Consultation Question 59:

No

Please provide views below:

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity'

Please provide views below:

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

Yes

Please provide views below:

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity'

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

No

Please provide views below:

I dispute that surrogacy is ever a medical necessity

70 Consultation Question 62:

Please provide your views below:

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

Please provide your views below:

I dispute that surrogacy is ever a medical necessity

71 Consultation Question 63:

Other

Please provide your views below:

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

Please provide your views below:

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

Yes

Please provide your views below:

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

72 Consultation Question 64:

No

Please provide your views below:

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'

73 Consultation Question 65:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'

75 Consultation Question 67:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'

77 Consultation Question 69:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'

111 Consultation Question 103:

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'

115 Consultation Question 107:

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Nia (a charity that supports women who have experienced male violence)

www.niaendingviolence.org.uk

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Academic

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[REDACTED]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so

the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

- 1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

- 1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

- 1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

- 1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and

parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth

and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Response ID ANON-2V7F-Y8ZE-N

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 00:04:17

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

SUK

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Intended parent

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Not Answered

Please provide your views below:

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

Not Answered

Please provide your views below:

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Not Answered

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

Yes

Please provide your views below:

15 Consultation Question 8:

Yes

Please provide your views below:

Not Answered

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Yes

Please provide your views below:

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

Yes

18 Consultation Question 11:

Other

Please provide your views below:

I agree with the right to object, but I think the timescale is too long and could make registering the birth difficult.

19 Consultation Question 12:

Yes

Please provide your views below:

20 Consultation Question 13:

Not Answered

Please provide your views below:

21 Consultation Question 14:

Not Answered

Please provide your views below:

22 Consultation Question 15:

Yes

Please provide your views below:

No

Please share your views below:

23 Consultation Question 16:

Yes

Please provide your views below:

Yes

Please provide your views below:

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

Yes

Please provide your views below:

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

I disagree with this as I don't understand why it's required. If there is no suggestion the surrogate intended to object, why should the default position upon her death be to further scrutinize the case and the IPs?

To be honest it seems incredibly cruel to put IPs through that when their surrogate has just died.

26 Consultation Question 19:

Yes

Please provide your views below:

Please provide your views below:

27 Consultation Question 20:

Yes

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

29 Consultation Question 22:

Please provide your views below:

30 Consultation Question 23:

Please provide your views below:

31 Consultation Question 24:

Please provide your views below:

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

33 Consultation Question 26:

Not Answered

Please provide your views below:

34 Consultation Question 27:

Not Answered

Please provide your views below:

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Not Answered

Please provide your views below:

36 Consultation Question 29:

Please provide your views below:

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Yes

Please provide your views below:

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

55 Consultation Question 47:

Yes

Please provide your views below:

Yes

Please provide your views below:

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

57 Consultation Question 49:

Yes

Please provide your views below:

Please provide your views below:

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

59 Consultation Question 51:

Yes

Please provide your views below:

Please provide your views below:

Yes.

60 Consultation Question 52:

Please provide your views below:

Yes

Please provide your views below:

Yes

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

63 Consultation Question 55:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

based on costs actually incurred by the surrogate, but without the need for production of receipts; or

Please provide your views below:

81 Consultation Question 73:

Please provide your views below:

82 Consultation Question 74:

Please provide your views below:

83 Consultation Question 75:

Please provide your views below:

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

85 Consultation Question 77:

Please provide your views below:

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

Please provide your views below:

No - I believe this crosses the line into a commercial arrangement.

Please provide your views below:

No.

Not Answered

Please provide your views below:

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

Yes via life insurance.

89 Consultation Question 81:

Please provide your views below:

Yes I believe modest gifts should be permitted.

90 Consultation Question 82:

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

Please provide your views below:

This would constitute commercial surrogacy, which I disagree with.

Not Answered

Please provide your views below:

Please provide any views below:

91 Consultation Question 83:

Please provide views below:

Not Answered

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Not Answered

Please provide your views below:

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

95 Consultation Question 87:

Please provide your views below:

96 Consultation Question 88:

No

Please provide your views below:

I believe altruistic surrogacy has to operate on trust.

No

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Not Answered

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

none

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response x
- This is a response on behalf of an organisation
- Other

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Surrogate
- Intended parent
- Person born of a surrogacy arrangement
- Family member of a surrogate x
- Family member of an intended parent
- Legal practitioner
- Medical practitioner or counsellor
- Social worker
- Academic
- Other individual

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[Enter your phone number here.]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

- 1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:
- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
 - (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
 - (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:
- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
 - (2) complied with procedural safeguards for the agreement, and
 - (3) met eligibility requirements,
- on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and

with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the

challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.15 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Consultation Question 16.

1.16 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.17 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Consultation Question 17.

1.18 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

1.19 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.20 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.21 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.22 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.23 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.24 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:
 - (a) administrative, or
 - (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.25 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.26 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.27 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.28 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.29 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.30 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the 'intended parents' should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women's reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.31 For all surrogacy arrangements, we invite consultees' views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and
- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

1.32 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

1.33 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.34 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.35 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.36 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.37 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.38 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.39 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.40 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.41 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.42 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.43 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.44 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.45 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

1.46 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

1.47 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

1.48 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

1.49 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.50 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.51 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.52 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.53 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.54 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.
Do consultees agree?

YES

1.55 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.56 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

1.57 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

1.58 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

1.59 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

1.60 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.61 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.62 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.63 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.64 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.65 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
- (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

- 1.66 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

- 1.67 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.68 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

1.69 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

1.70 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

1.71 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

1.72 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.
Do consultees agree?

YES

Paragraph 12.64

Consultation Question 60.

1.73 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.
Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

1.74 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.
Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.75 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.76 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.77 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.78 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.79 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.80 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.81 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.82 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.83 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.84 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.85 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.86 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.87 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.88 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.89 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.90 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.91 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.92 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.93 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.94 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.95 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.29

Consultation Question 76.

1.97 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.98 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.99 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.100 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed

to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.101 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.102 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.103 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am frankly appalled that this question is even being asked. Who do you think should pay for the death of this poor woman? And how is this a justifiable risk. Is a woman's health of less importance than someone else's selfish desire for a baby at all costs?

Paragraph 15.56

Consultation Question 81.

1.104 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.105 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.106 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.107 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.108 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.109 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

Again I find myself absolutely appalled that you can ask such questions. Death of mother, stillbirth, miscarriage – not yet mentioned are all the other risks inherent in pregnancy and birth. Is there nothing in our society belonging to women and children that cannot be bought by those rich enough to pay!

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.110 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.111 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.112 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.113 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.114 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.115 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.116 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.117 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.118 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.119 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the ‘intended parents’ to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur’s recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.120 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.121 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child’s country of birth.

Do consultees agree?

NO

Allowing the ‘intended parents’ to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur’s recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.122 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.123 We provisionally propose that:

(1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or

(2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.124 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.125 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.126 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.127 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.128 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.129 We provisionally propose that:

1.130 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.131 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.132 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.133 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.134 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.135 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.136 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.137 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.138 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.139 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Consultation Question 107.

1.140 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself. There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other countries.

1.141 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason.

Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.142 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.143 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit.

There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.144 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.145 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.146 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.147 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.148 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and
- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.149 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.150 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.151 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

1.152 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.153 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.154 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.155 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have

an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

As you will no doubt have gathered, the majority of these responses were copied from Nordic Model Now. This is for several reasons, I am not a legal person and did not understand much of the language of this supposed ""consultation". The wording seems deliberately chosen to confuse..

There are 118 questions which I am led to believe is not in line with the guidelines you are given about creating consultations.

The wording you use does not suggest that you are asking me objectively about the issue _ which is what a consultation by its very nature is supposed to be is it not?

At no point in the 118 questions did you ask me my opinion on surrogacy. At no point was I asked whether I believed surrogacy should be legally allowable, let alone asked me the ethical position.

This consultation is rushed and seriously flawed.

Children are not an item to be owned, parenthood is not a human right, Women do however have a human right to full ownership of every part of our bodies, and we are not for sale, rent or hire!

Paragraph 18.22

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 01:20:03

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

Surrogacy UK

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Surrogate

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Other

Please provide your views below:

An exception should apply if all parties are habitually resident in the UK but choose to use a clinic abroad for treatment. Provided they have met the requirements of the new pathway they shouldn't need to go to the High Court.

Please provide your views below:

Provided they have appropriate experience.

9 Consultation Question 2:

Please provide your views below:

As there will be a reduction in the number of domestic cases being heard via this route, the level of experience in this area will reduce, particularly in areas where surrogacy cases are less common such as the [REDACTED] where I reside. I'm already aware of cases where the parents are in [REDACTED] but the case is heard in [REDACTED], for example. Awareness of surrogacy and the application of the law is more important than the level of judiciary. Perhaps a pragmatic approach would be that lay justices need to have undertaken some mandatory training to hear a surrogacy case.

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

Yes

Please provide your views below:

In my experience of parental orders it is most common that this is a paper based exercise if this were the case it would be important to ensure the the courts can accommodate the prompt arrangement of the directions order.

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Yes

Please provide your views below:

There could be an argument that this would be covered by GDPR and it should be freely available.

13 Consultation Question 6:

Please provide your views below:

Wherever possible the Law Commission should seek to remove inconsistencies between Scotland and the rest of the UK. It is very common that surrogacy 'teams' have members in both countries, it seems strange that two babies born through surrogacy in the same hospital will have different officials involved in confirming their parenthood due to where they live. The paper gives the example of a a Scottish couple who achieved the parental order without legal representation. Documentation should be clear to ensure that parents through surrogacy in Scotland are able to access the parental order process in the same manner as those in England.

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

Yes

Please provide your views below:

However as a surrogate I do not agree with the surrogate's 'right to object' post birth. The intended parents are the parents and should be recognised from birth without delay.

15 Consultation Question 8:

Yes

Please provide your views below:

100 years; or

Please provide your views below:

100 years seems pragmatic for an arrangement which results in a live birth. There is no indication here what will happen for arrangements which end in miscarriage or teams which end after a period of trying to conceive.

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Yes

Please provide your views below:

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

18 Consultation Question 11:

No

Please provide your views below:

Grounds of objection should be supplied, specific grounds such as information came to light that wasn't previously disclosed, a conviction subsequent to the DBS etc..

The defined period of registration less one week is impractical, inconsistent and does not reflect the wishes of UK surrogates. I would like the intended parents to be recognised as the child's parents from birth.

The inconsistency between Scotland and England is a key point here which should not be ignored and makes this concept seem particularly arbitrary.

There is an issue here about the birth certificate here, we will have parents who can't register their child at the GP as they don't have one until the period has expired. As birth is registered where baby was born this could often mean a long journey across the country with a young baby at 3 /5 weeks old working within the window available and with many restrictions on the availability of appointments, which clearly is not in the interests of the child.

If a defined period is the only option a compromise may be 10 days post birth, this is the period after which care transfers from the midwife to the health visitor and would feel the most natural point as the NHS treats the person who has given birth and the baby differently from this stage. If there were any concerns about the surrogate's wellbeing there has been an opportunity to explore this at several points by the 10 day check.

19 Consultation Question 12:

No

Please provide your views below:

- (1) In the rare circumstances of a surrogate objecting to default to the surrogate being the legal parent is wrong and not in the spirit of the agreement they have all freely entered into after all the appropriate checks.
- (2) Giving 'biology' privilege is a real concern here, by looking at TS and GS in the same way to then switch to prioritising biological link over the care-giver is disappointing. The surrogate may object on the grounds that the IPs have split up but then to say that you would give the legal parenthood to the one of them that is biologically related is unfair. Statistically this will disproportionately have a negative impact on women who are less likely to be biologically related than a man in a surrogacy arrangement. Consideration to this should be given in any equality impact assessment should this proposal be upheld.
- (3) This seems as though it is the only option should the right to object be maintained however the parental order process needs to be fit for purpose should this be the case.

20 Consultation Question 13:

Yes

Please provide your views below:

It is unclear here whether legal parenthood would revert to the surrogate until the IPs apply for a parental order. If there are concerns about capacity of the surrogate it is more important than ever that the IPs retain parental responsibility during this period.

21 Consultation Question 14:

Yes

Please provide your views below:

Existing provisions of health visitor etc.. that would apply to any parent should apply to this case.

Further consideration needs to be given here to where surrogacy teams switch from GS to TS or TS to GS which has happened in many surrogacy situations I am aware of. Clarification on whether a reassessment is required or whether the clinic / surrogacy organisation would accept the assessment of the other.

22 Consultation Question 15:

Other

Please provide your views below:

In the main I agree however there is some disconnect in the proposed legislation for the expectations of the surrogate's partner in the new pathway requirements whilst he could not have legal responsibility. In a traditional surrogacy arrangement where the couple have biological children he may have a view based on the fact the child through surrogacy is a half-sibling to his other child(ren) should an issue arise.

Other

Please share your views below:

See comment above.

23 Consultation Question 16:

Yes

Please provide your views below:

Having lost a surrogate baby prior to the 'stillbirth period' () I think it is very important that the intended parents as well as the surrogate are able to make decisions collectively with regard to the post-mortem arrangements of the child. Whilst more for guidance than legislature there should be some recognition that whilst decisions during pregnancy must ultimately rest with the surrogate there are some circumstance such as those I experienced where the decisions relate to the baby rather than the surrogate's health. Outcomes of a post mortem may provide information of benefit to the IPs and/or surrogate if looking to conceive again and the handling of baby's remains must be treated with sensitivity to all parties.

Yes

Please provide your views below:

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

Yes

Please provide your views below:

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

I strongly disagree. If the whole intention of the new pathway is to complete the checks up front why should the death of the surrogate change this? Particularly in the context the surrogate's partner / husband has no parental responsibility under the pathway. The death of the surrogate would already be a distressing circumstance to then add further paperwork and court hearings seems very strange and contrary to the surrogate's wishes. Provided the arrangement is in line with her will expressing her wishes there should be no need to deviate from the pathway.

26 Consultation Question 19:

Yes

Please provide your views below:

Please provide your views below:

Option 1 is far more preferable, the child was created for its parents through surrogacy and they should be designated as such with their wishes for guardianship respected.

As a surrogate I would be devastated if I lost my IPs to then have the baby registered with me as the mother rather than the IPs would be a terrible blow.

27 Consultation Question 20:

Yes

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

This would only be appropriate in extreme cases such as a stillbirth or miscarriage /early birth of a child where decisions need to be made in relation to post mortem. The intended parents should always be those on the birth certificate.

29 Consultation Question 22:

Please provide your views below:

30 Consultation Question 23:

Please provide your views below:

The list seems reasonable.

31 Consultation Question 24:

Please provide your views below:

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

Agree

33 Consultation Question 26:

Yes

Please provide your views below:

34 Consultation Question 27:

Yes

Please provide your views below:

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

No

Please provide your views below:

The surrogate should not have nor do I (as a surrogate) wish to have parental responsibility for someone else's child. The parenthood should be in place from birth, the only potential compromise could be 10 days post birth as indicated above.

36 Consultation Question 29:

Please provide your views below:

PR should not apply to a surrogate post birth unless the baby has died early.

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Yes

Please provide your views below:

strongly agree, from a surrogate's perspective I felt no difference having done both TS and GS.

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

I met my first IPs independently via a website however we joined Surrogacy UK as a team for further support and our agreement. We had counselling and legal advice, via clinic and SUK.

39 Consultation Question 32:

Please provide your views below:

Please provide your views below:

40 Consultation Question 33:

Yes

Please provide your views below:

Other

Please provide your views below:

should be non profit making

Yes

Please provide your views below:

41 Consultation Question 34:

representing the organisation to, and liaising with, the regulator;; managing the regulated surrogacy organisation with sufficient care, competence and skill;; ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;; training any staff, including that of the person responsible; and, providing data to the regulator and to such other person as required by law.

Please provide your views below:

Please provide your views below:

In addition - responsible for escalating any issues / concerns / complaints about the organisation to its own Ethics Committee which should include appropriate independent professionals outside of the organisation.

Please provide your views below:

Experience of surrogacy is more important than formal qualifications provided there is an appropriately qualified board and/or ethics committee.

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Yes

Please provide your views below:

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Yes

Please provide your views below:

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

I'm not sure this will be practical considering the number of social media channels on which people can network and engage, unless these people can at least pursue a PO route. If not there is a risk that people won't properly register the child, defeating all of the great work proposed by having a register.

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

See above, online organisations can change from day to day, I'm not sure there will be practical ways to police this / hold individuals accountable.

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Yes

Please provide your views below:

Provided additional resource is provided for this.

Please provide your views below:

They could replicate the approach with clinics with some additional checks on the facilitation area.

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Yes

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

Other

Please provide your views below:

The arrangements themselves should be facilitated independently without either party having 'engaged' a paid for service, reducing the risk they are acting in favour of either party - i.e. a not for profit organisation.

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

Some restrictions should remain to ensure this is handled ethically. I agree the law should be relaxed however where there is a space that individuals may advertise themselves personally there is a risk / opportunity for deception / fraud.

As part of HFEAs audit of organisations I would anticipate that they examine the targeting and advertising spend of organisations.

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Yes

Please provide your views below:

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

As per my responses previously, I have concerns about the difference in birth registration periods between Scotland and England.

All forms should state parent 1 / parent 2 rather than mother / father.

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

55 Consultation Question 47:

Yes

Please provide your views below:

Yes

Please provide your views below:

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

strongly agree

57 Consultation Question 49:

Yes

Please provide your views below:

Please provide your views below:

agreed

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

agreed

59 Consultation Question 51:

Yes

Please provide your views below:

Please provide your views below:

agreed

60 Consultation Question 52:

Please provide your views below:

agreed

Please provide your views below:

agreed

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

agreed

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

There should still be some impetus for IPs to act promptly as it is not in the interests of surrogates to retain PR for any longer than is needed. Perhaps a guideline of 6 months with some flexibility.

The Law Commission should be mindful that this links to some employment issues where I am aware of cases that IPs have been told they must show evidence of the parental order 'within 6 months' to qualify for enhanced / occupational / statutory adoption pay. Some of the guidance on the government guidance available regarding surrogacy is confusing for employers and they don't always interpret this correctly, abolishing the 6 months

could assist with this issue but if so needs to be done with caution.

63 Consultation Question 55:

Yes

Please provide your views below:

Yes

Please provide your views below:

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

Yes

Please provide your views below:

Please provide your views below:

Not required by law but should be explored by organisations (as Surrogacy UK currently do).

65 Consultation Question 57:

Please provide your views below:

2 - No, the couple should be in an enduring relationship or single

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Yes

Please provide views below:

67 Consultation Question 59:

Yes

Please provide views below:

Please provide views below:

agreed

Other

Please provide views below:

Agreed unless both IP and surrogate are UK based and just using an overseas clinic for treatment.

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

Yes

Please provide your views below:

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

Yes

Please provide views below:

70 Consultation Question 62:

Please provide your views below:

In both cases, it is important that surrogacy is not seen as a lifestyle choice or an easy option. Considering the current shortage of surrogates it is appropriate that those most in need are those who have the opportunity .

Please provide your views below:

In the broadest sense to include trans people with gender dysphoria, mental health conditions such as tokophobia etc.. a GP report to the regulated surrogacy organisation should be used.

71 Consultation Question 63:

Yes

Please provide your views below:

Please provide your views below:

agreed

Other

Please provide your views below:

Agree in principle, however if a surrogate disagrees on human rights grounds is it right that the parents can not achieve parenthood as a result.

72 Consultation Question 64:

Yes

Please provide your views below:

Please provide your views below:

Yes

Please provide your views below:

73 Consultation Question 65:

Yes

Please provide your views below:

Yes

Please provide your views below:

With the freedom of organisations to set different age limits within these terms.

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Other

Please provide your views below:

Agree other than the partner, not part of the current process as standard, should be at the discretion of the clinic.

Please provide your views below:

75 Consultation Question 67:

Other

Please provide your views below:

The quality of counselling across the UK is very varied, if this was opened to TS arrangements it is very important that resources be made available to ensure appropriately trained counselling is available which is of benefit. It may be that this could be provided by appropriately trained individuals in a surrogacy organisation.

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Other

Please provide your views below:

The agreement itself should not be facilitated by the solicitor. It is key that the quality of legal counsel across the UK is improved should these sessions be deemed as mandatory. In order not to increase costs of the new pathway and encourage its use these sessions should be a fixed fee / limit set such as a settlement agreement.

77 Consultation Question 69:

Yes

Please provide your views below:

Please provide your views below:

yes

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

Disagree, this is no specific test of a future pregnancy.

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

Yes

Please provide your views below:

Individual medical advice should be sufficient.

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

based on costs actually incurred by the surrogate, and only on production of receipts.

Please provide your views below:

this could include a bank account with a breakdown of spend.

81 Consultation Question 73:

Please provide your views below:

yes, clothing, travel, loss of earnings, healthy food.

82 Consultation Question 74:

Please provide your views below:

yes, over the counter treatments, childcare, help at home etc..

83 Consultation Question 75:

Please provide your views below:

yes, wills, life insurance, vitamins, travel to clinics, appointments etc..

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

Yes, minus deductions

85 Consultation Question 77:

Please provide your views below:

- (1) yes
(2) within reason based on historical information i.e. planned incremental progression and partners earnings if they take time off due to surrogacy

86 Consultation Question 78:

Please provide your views below:

This could be difficult to quantify due to Universal Credit rules but yes in principle if directly related. Less likely in an expenses model.

87 Consultation Question 79:

Please provide your views below:

Expenses should be based on actual expenses incurred and not a set fee for a particular complication as these will impact different women in different ways. For example if I had a C section the costs would be substantial as I am very reliant on my car for travel and due to school arrangements, when I had a miscarriage at 12 weeks the costs were minimal however in the months later I required counselling. To put a 'price' or 'figure' on these aspects is a move towards commercial surrogacy which as a surrogate I wholly oppose. There is no financial compensation that could have mitigated the impact of losing my friend's son, the support of Surrogacy UK and my friends was what was important as surrogacy is based on a relationship and not a transaction.

Please provide your views below:

Not Answered

Please provide your views below:

You cannot compensate surrogacy and there should not be an attempt to do so. This is a dangerous move towards commercialisation.

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

Covering life insurance only until 6 months post birth is appropriate.

89 Consultation Question 81:

Please provide your views below:

During the surrogacy relationship extravagant gifts should not be permitted and are not wanted (from myself as a surrogate). An appropriate rule of thumb could be meeting the 'trivial' definition from HMRC - less than £50 in value. IPs may wish to buy presents for family members these should be equally of a trivial value.

90 Consultation Question 82:

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

Please provide your views below:

Surrogacy is not a service or job and should never been seen as such. To do so will tarnish the altruistic nature and motivation of surrogates.

Not Answered

Please provide your views below:

lost earnings;

Please provide any views below:

as the 'fee' would be taxable.

91 Consultation Question 83:

Please provide views below:

It should be based on actual expenses to avoid this issue.

Not Answered

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Other

Please provide your views below:

This is dependent upon the outcome, it should be based on actual expenses and therefore the parental order route should stay within that with an understanding that they may be local variances for international surrogacy.

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

[REDACTED] -

Whilst this is my personal perspective having experienced surrogacy first hand I'm aware many of my 'surro sisters' feel this way and I hope to give a voice to altruistic surrogates here.

You are putting yourself through so much surely some financial compensation would be appropriate?

It's our dream too... as surrogates we set upon our journeys with a shared hope, we want to create and complete families. Surrogacy isn't a job, it's a passion and the relationships we have with the parents are based on trust and friendship. Anything more than expenses changes the dynamic and would make me feel like an employee. It's a huge responsibility looking after your friends' baby but to be being paid for that would make me feel like I was working for the parents rather than being a friend with a shared dream.

[REDACTED] recently stated on twitter that US surrogates (who do receive compensation) say that when you work it out to an hourly rate it is such a tiny amount. When you start thinking about compensation and working things out to an hourly rate you actually realise how ridiculous it is, there is no financial amount that would be appropriate to 'compensate' someone for surrogacy so why try to put a price on it? A surrogacy journey is not just the surrogate, it affects our husbands and partners, our children, our hobbies, our whole lives. There is no 'pause' button in surrogacy, you aren't a nanny who can take a day off now and again. This is why surrogacy relationships should be based on friendship.

[REDACTED] loss has affected me as a surrogate. It is now 9 months since I lost my friends' little boy and I think about him every single day, there is no amount of financial compensation that could have covered this, I find peace knowing that my friends are still there for me because our relationship is based on trust and not a transaction.

If the parents want to treat you, why not?

Most intended parents have had to face terrible inequalities in their journey to parenthood, due to disability, illness or simply falling in love with someone of the same gender.

As a surrogate I am acutely aware of the sacrifices my friends have had to go through in order to become parents or step towards that dream. In a situation where, lavish gifts are permitted or payments above expenses allowed, further inequalities are created and surrogacy could become beyond the means of intended parents who are so deserving of the opportunity to be parents.

Wouldn't it be easier for you if you didn't have to keep evidence of expenses?

Yes of course it would but no woman goes into surrogacy for an easy life! Believe me, when you have been up 3 or 4 times during the night, can no longer see your toes and your kids haven't been able to wrap their arms around you for a hug for the past 3 months; expenses are no bother! Keeping a spreadsheet up to date and collecting receipts to ensure evidence is available for the parental order is the easy bit of the journey. I am proud to be able to account for my expenses and share these with the intended parents. At Surrogacy UK surrogates are given advice to ensure that expenses are appropriate and specific to the individual.

Moving to a system with a 'flat fee' based on an average may lead to some surrogates; such as those with several children of their own or a high loss of earnings actually being out of pocket as a result of a surrogacy journey.

The law needs to be reformed, surely, we have to consider payments at the same time?

Actually no, as a surrogate I am passionate about legal reform on issues such as having the correct parents recognised from birth on the birth certificate. These legal changes can be made without the need to impose a system of fees / compensation or payments. These are very separate issues and those who lump them together are doing a disservice to reforming the law and tackling the concerns of intended parents and surrogates.

Recently we have seen improved government guidance for health professionals and individuals in relation to surrogacy. These documents were created by working groups with representatives for the surrogacy community, surely some clear and concise guidance in relation to expenses could follow a similar route?

Can't we just have two systems in the UK?

I don't believe that an altruistic and commercial system of surrogacy can run side by side in the UK.

I can not see how the two systems would be differentiated. As a surrogate I deal with a lot of misunderstandings even with the current system.

There are two questions I get asked all the time; are you doing it for your friends? Do you get paid?

I am proud to answer that yes I am helping my friends and no I don't get paid.

Any element of commercialism would mean contracts and lawyers, surrogacy would naturally become more expensive and I do not believe these changes would in fact give any additional protection to intended parents.

The rare challenging cases which make it to the high court are more often than not international rather than UK surrogacy cases and family judges have shown some discretion in how the law has been applied in those cases.

If there is an argument for two systems the appropriate two systems to reflect custom and practice would not be to offer a commercial option in the UK, but to offer a different approach to compensation where this is legal in the surrogate's country of residence in comparison with UK surrogates whom can only have expenses covered.

In this debate it is important that we do not forget that surrogacy is about creating human lives, those little people whom the intended parents trust us to care for, nurture and bring into the arms of their loved ones. Mutual trust and respect (with guidance and support) rather than contracts and fees should be the foundations of a surrogacy relationship. For love... not money.

I would (with much sadness) walk away from surrogacy if a commercialised model was introduced in the UK and I'm confident I would not be alone in this.

95 Consultation Question 87:

Please provide your views below:

Audits by the HFEA on a spot check basis of the surrogacy organisation.

96 Consultation Question 88:

Yes

Please provide your views below:

using escrow or similar

Yes

Please provide your views below:

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

100 Consultation Question 92: We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?

Yes

Please provide your views below:

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

102 Consultation Question 94:

Yes

Please provide your views below:

Yes

Please provide your views below:

Yes

Please provide your views below:

Yes

Please provide your views below:

Please provide your views below:

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

Yes

Please provide your views below:

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Yes

Please provide your views below:

106 Consultation Question 98: We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood. Do consultees agree?

Yes

Please provide your views below:

107 Consultation Question 99:

Yes

Please provide your views below:

108 Consultation Question 100:

Please provide your views below:

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

unpaid leave should be allowed in law provided this can be claimed from IPs as an expense.

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Yes

Please provide your views below:

To cover self employed IPs

111 Consultation Question 103:

Please provide your views below:

This is very important, as a surrogate you want the IPs to be there for the birth and in certain jobs employers will be inflexible.

The guidance should allow them to take at least 2 weeks pre the planned date as they can for adoption.

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

The arrangements are probably provided but some guidance to employers in this area would be of benefit.

I also plan to return to work while expressing for my next surrobaby but am not a 'nursing mother'

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

There is a real lack of awareness by employers and although some information on .gov this is very limited. The government should work with employers associations and professional bodies such as the cipd to provide guidance to employers in this area.

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

continued publicity to the guidance produced two years ago to educate care givers in surrogacy.

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

Surrogates want to be assured that parents will be recognised as such from birth, whilst the pathway makes steps towards this these are very limited.

Accessibility as such is not necessarily an issue for surrogates, what is important is that surrogacy is based on trust and not commercialised.

From a personal perspective I could not afford to be a surrogate under a 'fee system' that was taxable, my own current expenses + 40% tax would be £19,880 and in excess of what most couples would be able to afford. This would not include anything for a C section or unplanned emergency. More importantly however it would mean being paid for surrogacy which I would wholly oppose. I have a job and could never be comfortable with surrogacy being classed in this regard.

I am concerned that unless expenses are treated as expenses only many genuine altruistic surrogates, motivated for the right reasons will find it difficult to be a surrogate in this situation.

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

N/A

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response
- This is a response on behalf of an organisation
- Other

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Surrogate
- Intended parent
- Person born of a surrogacy arrangement
- Family member of a surrogate
- Family member of an intended parent
- Legal practitioner
- Medical practitioner or counsellor
- Social worker
- Academic
- Other individual

5. What is your email address?

Email address:

[Enter your email address here.]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[Enter your phone number here.]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

(1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and

(2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration.

Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,

- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

- 1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;

- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in

surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or

parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Paragraph 8.77

Consultation Question 17.

1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

- 1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

- 1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:
- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
 - (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

- 1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

[N/A.]

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response ☒
- This is a response on behalf of an organisation ☐
- Other ☐

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Surrogate ☐
- Intended parent ☐
- Person born of a surrogacy arrangement ☐
- Family member of a surrogate ☐
- Family member of an intended parent ☐
- Legal practitioner ☐
- Medical practitioner or counsellor ☐
- Social worker ☐
- Academic ☐
- Other individual.....X

5. What is your email address?

Email address:

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

(1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and

(2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration.

Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,

- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

- 1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;

- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in

surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or

parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Paragraph 8.77

Consultation Question 17.

1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

- 1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

- 1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

- 1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

- 1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogacy arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 01:47:14

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

no

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a response on behalf of an organisation

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Intended parent

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

no

Chapter 6: The parental order procedure

8 Consultation Question 1:

No

Please provide your views below:

There should be international agreements in place in order for the international surrogacy to be immediately recognised or where not possible a quick procedure should be defined

Please provide your views below:

There should be no need to go through a judge, a quicker procedure should be designed

9 Consultation Question 2:

Please provide your views below:

I don't think domestic surrogacy should require a post birth parental order, unless there is a dispute or some other issue has arisen.
I am not sure for those special cases which would be the right level of the judiciary

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

Other

Please provide your views below:

I believe that parental status should not be awarded through a judicial proceeding and after the child is born, I think it should be assigned by a contract signed by the parties before the pregnancy starts so that the parental status is always recognizing the intended parent as the parent and no court hearing is needed

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Other

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

Yes

Please provide your views below:

I fully agree with this proposal and think that the surrogate right to object should be limited to very few and exceptional circumstances

15 Consultation Question 8:

Other

Please provide your views below:

I agree

100 years; or

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

No

Please provide your views below:

It should be possible to use anonymously donated gametes if they are healthy

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

No I don't think it should prevent it at all. All surrogacy types should enter the new pathway

18 Consultation Question 11:

No

Please provide your views below:

The right to object should be defined only for some specific motivations and should be limited to no more than 2 weeks after birth

19 Consultation Question 12:

No

Please provide your views below:

I fully disagree.

If the surrogate object to the intended parent to gain parenthood the intended parents should still remain the parent until the case has been heard by a judge and a decision has been taken.

the possibility for the surrogate to raise such objections should be limited to very specific motivations for the sake of the child

20 Consultation Question 13:

No

Please provide your views below:

No I don't agree. such declaration should be signed at the same time as a contract is signed so at the inception before the pregnancy starts

21 Consultation Question 14:

Other

Please provide your views below:

22 Consultation Question 15:

Yes

Please provide your views below:

The spouse or partner of a surrogate should never be a legal parent of the child

No

Please share your views below:

No they should not become a legal parent of the child

23 Consultation Question 16:

Other

Please provide your views below:

Yes

Please provide your views below:

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

Other

Please provide your views below:

I am not sure why there would be surrogacy agreements outside the new pathway. I think the ratio should be to simplify things

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

Absolutely not. first of all I don't see why there should be a new pathway and an old pathway. there should be only one way of doing it, less complicated and more straightforward. Parenthood should be assigned clearly at conception of the child. there should be very little to no reason why the surrogate mother could object and if she dies even more it is important that the newborn is in safe care of the parents (intended parents)

26 Consultation Question 19:

Other

Please provide your views below:

The parent should be registered as parents at birth in any circumstances

Please provide your views below:

Please see my points above

27 Consultation Question 20:

Other

Please provide your views below:

I only agree with points 2 and 3 if the child has genetic material (egg or sperm) of the second intended parent, but in case the second parent has truncated the relationship, the first parent should be allowed to go ahead with the surrogacy on his own

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

Absolutely contrary to this propositions.

It makes no sense and confuses things even more. It would make the situation very complicated for the intended parents and emotionally catastrophic for the surrogate mother

29 Consultation Question 22:

Please provide your views below:

no further oversight if a proper contract was in place from before conception

30 Consultation Question 23:

Please provide your views below:

I am not sure

31 Consultation Question 24:

Please provide your views below:

not sure

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

I am not sure

33 Consultation Question 26:

No

Please provide your views below:

As I wrote above I am not sure that there should be 2 different pathways

34 Consultation Question 27:

Yes

Please provide your views below:

To the second point I would say in any case at least at this stage

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Not Answered

Please provide your views below:

36 Consultation Question 29:

Please provide your views below:

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Yes

Please provide your views below:

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

39 Consultation Question 32:

Please provide your views below:

I am not sure, probably only if things would not get more complicated

Please provide your views below:

I am not sure

40 Consultation Question 33:

Yes

Please provide your views below:

Only if they can actually favour the successful match of intended parents with a surrogate and not just to make a business out of those

No

Please provide your views below:

Yes

Please provide your views below:

41 Consultation Question 34:

representing the organisation to, and liaising with, the regulator;; managing the regulated surrogacy organisation with sufficient care, competence and skill;

Please provide your views below:

Please provide your views below:

Please provide your views below:

Should be a businessperson with an interest in surrogacy

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Yes

Please provide your views below:

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

onboarding intended parents, matching with surrogates, medical support to a successful pregnancy

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Other

Please provide your views below:

not sure

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

No i don't think so

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

yes -regulatory

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Yes

Please provide your views below:

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

No

Please provide your views below:

They could be enforceable

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

Yes

Please provide your views below:

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

Yes

Please provide your views below:

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Yes

Please provide your views below:

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

I am not sure

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

55 Consultation Question 47:

Not Answered

Please provide your views below:

Yes

Please provide your views below:

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

I am not sure

57 Consultation Question 49:

Yes

Please provide your views below:

Please provide your views below:

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

59 Consultation Question 51:

Not Answered

Please provide your views below:

Please provide your views below:

I am not sure

60 Consultation Question 52:

Please provide your views below:

secondo era un po' diverso

Please provide your views below:

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

No

Please provide your views below:

This should also be open at least to UK citizens living abroad

Please provide your views below:

I don't think so

65 Consultation Question 57:

Please provide your views below:

I am not sure

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Yes

Please provide views below:

67 Consultation Question 59:

Yes

Please provide views below:

Yes I agree with both points

Please provide views below:

yes it should be permttted

Yes

Please provide views below:

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

Yes

Please provide your views below:

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

Yes

Please provide views below:

70 Consultation Question 62:

Please provide your views below:

no there shoul nor be such a requirements

Please provide your views below:

71 Consultation Question 63:

Yes

Please provide your views below:

Please provide your views below:

No this should not be a fair

Yes

Please provide your views below:

72 Consultation Question 64:

Yes

Please provide your views below:

Please provide your views below:

No there should not be another time waster

I don't think you would need to rush to get something report

Yes

Please provide your views below:

73 Consultation Question 65:

Yes

Please provide your views below:

Yes

Please provide your views below:

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

based on costs actually incurred by the surrogate, but without the need for production of receipts; or

Please provide your views below:

81 Consultation Question 73:

Please provide your views below:

Surrogates should be paid a fee above the costs. the fee can be organized in different ways

82 Consultation Question 74:

Please provide your views below:

Surrogate should charge a fee for their time and effort

83 Consultation Question 75:

Please provide your views below:

Yes they should pay all costs

costs included should be, medical costs, loss of income (if properly justified) some living costs related to the pregnancy and an additional sum for the surrogate mother, above the costs

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

yes if reasonable, discussed and agreed before hand

all costs should be defined clearly in the surrogacy agreement

85 Consultation Question 77:

Please provide your views below:

if this is a reasonable costs than the intended parents should cover it

86 Consultation Question 78:

Please provide your views below:

I am not sure

87 Consultation Question 79:

pain and inconvenience arising from the pregnancy and childbirth;; medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or

Please provide your views below:

for the third one ans insurance might be negotiated during the surrogacy agreement negotiation

Please provide your views below:

Surrogate should be able to earn a modest sum of monet from surrogacy

Not Answered

Please provide your views below:

probably a mixture based on free negotiation within certain paramenters and caps.

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

no this was a risk che decide to take

89 Consultation Question 81:

Please provide your views below:

no they should not be able to buy gifts. Compensation for her should be clearly defined in the surrogacy agreement

90 Consultation Question 82:

It should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

Please provide your views below:

if it is a reasonable amount, probably within a limit/ range

Not Answered

Please provide your views below:

a mix of the two. freely negotiated between he parties but either capped or based on some set calculations and estimates

lost earnings;; compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or

Please provide any views below:

91 Consultation Question 83:

Please provide views below:

Yes it should, as there will not be further expences linked to the pregnancy

to any miscarriage or termination; or

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees

agree?

Yes

Please provide your views below:

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

Surrogates should be able to cover their costs and gain a modest amount of money

95 Consultation Question 87:

Please provide your views below:

I am not sure

96 Consultation Question 88:

Yes

Please provide your views below:

if she did her part than she should be paid what was agreed

Yes

Please provide your views below:

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:

agreed

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

100 Consultation Question 92: We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?

Not Answered

Please provide your views below:

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

102 Consultation Question 94:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Please provide your views below:

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

Not Answered

Please provide your views below:

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Yes

Please provide your views below:

106 Consultation Question 98: We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood. Do consultees agree?

Not Answered

Please provide your views below:

107 Consultation Question 99:

Not Answered

Please provide your views below:

108 Consultation Question 100:

Please provide your views below:

Please provide your views below:

From: [REDACTED]
To: [surrogacy](#)
Subject: Surrogacy consultation
Date: 12 September 2019 15:56:11

Hello,

I'm afraid I lack the time to answer your questionnaire but as a UK citizen, a woman, and a mother I would like to offer feedback to the surrogacy consultation.

- *The needs of any children born via surrogacy should be centred (I do not see much evidence of this in the consultation thus far).
- *There should be NO advertising of/for surrogacy
- *There should be NO internationalization of surrogacy.
- *Minimum age for surrogacy should be 25.
- *No woman deemed to be high-risk for pregnancy for any reason should be allowed to act as a SM.
- *IPs should be required to pay for any and all medical costs incurred by the SM as a result of the pregnancy, including those arising later in life (e.g. vaginal prolapse, incontinence, etc.) and including any mental health/counselling needs.
- *IPs should be required to pay for life insurance for the SM so
- *Counselling and legal representation for the SM should be required and should be funded by the IPs. The SM should have her choice of services (rather than having this chosen by the IPs on her behalf).
- *Maximum number of surrogate pregnancies per individual SM should be limited to one
- *IPs should also cover any and all medical costs incurred by any egg donors involved in the pregnancy, including those arising later in life
- *The SM should always retain the right to terminate the pregnancy at any stage and for any reason without punitive measures being taken.
- *The child's right to have a relationship with its birth mother (the SM) should never be removed or restricted by the IPs.
- *Where is the assessment showing the impact on the NHS of surrogacy?
- *If the work of the SM is considered "altruistic" and therefore to be uncompensated, then so should the work of others involved in the SP, e.g. solicitors, doctors, etc. Pregnancy carries significant risks and I fail to see why the single person at risk should be uncompensated if others will make money from the process. However, I also believe that fee-based surrogacy is essentially the sale of women's wombs and the sale of children to those who can afford to pay, and the UK should not tolerate this as it is a serious violation of the human rights of children and of vulnerable women. I believe surrogacy should be banned and that the "new pathway" is abhorrent.
- *I also believe that this consultation breaches a number of the Consultation Principles 2018 and would like to see this publicly addressed.

Please contact me if you have any questions. Thank you for your time.

[REDACTED]

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 02:33:24

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Other individual

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

All cases of international surrogacy are a site of a crime conducted against economically deprived women. Economic deprivation is the reason that international surrogacy not only exists, but is referenced in the supporting documents of this consultation as comprising of a majority of cases of surrogacy 'arrangements' commissioned by UK citizens. Women who are coerced into this practice are known to have little ability to make choices in their own life, and thus the practice of international surrogacy can only be understood to be a crime against women internationally. Should the UK wish to participate in such crimes against humanity it had best represent itself to its fullest capacity in the high courts.

Please provide your views below:

To not allocate all suspected international surrogacy cases to the high court would expose Great Britain to have a culture supportive of the trafficking of human life and the reproductive slavery of economically deprived women. As this is the most serious of human rights explorations, no less than the highest of supreme courts should hear such a case.

9 Consultation Question 2:

Please provide your views below:

In the consultation documents, you propose that the only domestic surrogacy cases that would require a post-birth parental order would be those that the birth mother (surrogate) has contested. There is a reason why Switzerland, Norway, Germany, France and many other first-world countries have outlawed all forms of surrogacy, and this is due to the extremely serious human rights violations it incurs once commissioning parents begin to believe that they have ownership over the bodies of other humans. This includes their believed right to interfere with biological and psychological bonding

between the only two humans present in the creation of the child - the birth mother and the baby. Only the most senior judges should oversee such violations of human rights and the fraught ethical implications of the contested 'ownership' of human beings.

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

No

Please provide your views below:

The default position must always be that the duty and care of the child remains with the birth mother in order to maintain the human rights of both the child and the birth mother. To grant parenthood of a child to any but the birth mother in the first degree would constitute an inappropriate imbalance of power. To set a precedent in which the automatic parental rights could be granted to any but the birth mother would be dangerous to all women in the UK and internationally and would constitute a human rights breach of the highest order. The parental rights must fall initially to the birth mother to protect the integrity of Great Britain's commitment to the human rights of the child and to women. Should the birth mother deem herself unable to care for the child, or the home state to deem her unfit in that instance only should parental rights be contested in law.

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Yes

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

No

Please provide your views below:

These proposed changes have clearly been lobbied by those who would seek to be commissioning parents.

The consultation documents references submissions by 'surrogates' via a prior consultation. It is widely known now that this consultation was limited to a narrow population mainly consisting of lobbyists for this reform. There is evidence that these lobbyists populated the answers to this consultation with their own responses. Given that this consultation provided no evidence that the supposed 'surrogates' mentioned in the consultation documents were verified to be actual surrogates in real life, the only supporting claim provided by the consultation that this is beneficial to surrogate mothers cannot be supported. I would strongly advise that the commission be in a position to show that the basis upon which the 'benefits' of the proposed changes can be evidenced to be true before such a major change in law affecting the rights of children and women.

As mentioned in a previous answer, in no event should automatic parenthood be given to any but the birth mother on any occasion. To set the precedent that any but the birth mother can be given automatic parental rights would constitute a breach of the highest order of the human rights of women and children, specifically against the UN Special Rapporteur's key recommendations.

15 Consultation Question 8:

Yes

Please provide your views below:

Any crime that is committed against women and children for the purpose of commissioning a child should be thoroughly documented. This can ensure that any child conceived under such conditions has access to all information pertaining to their birth and hereditary origins.

Another period

Please provide your views below:

Although I strongly oppose the creation of a new pathway, any information collected by illegal practices of surrogacy should be kept. Subsequent generations should have the right to access information of the crimes committed against their ancestors, including non-related birth mothers as this may include information pertaining to disease risk and disability, ancestry and right to knowledge of their cultural ancestry and family origin. As such, records must not be destroyed or made inaccessible to involved parties.

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Other

Please provide your views below:

This prohibition should be across all cases of intended 'surrogacy'. The practice of egg harvesting for the purpose of surrogacy normalises idea of women's bodies as commodities, 'service providers' and 'places of business', all of which are in violation of the human rights of women. Furthermore, it increases the risk to children where there is no human being directly involved in the creation of the child who is committed in law or practice to care for the child after its birth. This creates a dangerous environment under which children can be created for the purpose of producing 'stock'.

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

I profoundly disagree with the proposals for the normalisation of the practice of surrogacy in the UK.

18 Consultation Question 11:

Other

Please provide your views below:

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

19 Consultation Question 12:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

20 Consultation Question 13:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6

weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

21 Consultation Question 14:

No

Please provide your views below:

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

22 Consultation Question 15:

No

Please provide your views below:

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

Yes

Please share your views below:

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

23 Consultation Question 16:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

No

Please provide your views below:

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents

before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

No

Please provide your views below:

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

26 Consultation Question 19:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

Please provide your views below:

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

27 Consultation Question 20:

Yes

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

29 Consultation Question 22:

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

30 Consultation Question 23:

Please provide your views below:

The child's best interests should drive all decisions about the child in the event of a procurement of a child via 'surrogacy'. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

31 Consultation Question 24:

Please provide your views below:

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all 'surrogacy' (co-erced gestation) arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that commissioning ('intended') parents should be added to the list of those who can apply for a section 8 order without leave.

33 Consultation Question 26:

No

Please provide your views below:

Any child born for the purpose of gift or exchange of goods MUST be viewed as the site of a crime, both against the mother co-erced into the practice and the child produced for this industry. Therefore the commissioning ('intended') parents must be charged with attempted child trafficking. Any allowance for the child to live with those that procured them in violation of human rights would create a climate conducive to child trafficking and exploitation of women and children in Great Britain.

34 Consultation Question 27:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes (if verifiable) alone do not justify a measure that contravenes recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Other

Please provide your views below:

I agree that the birth mother should have parental responsibility for the child but NOT that the 'intended parents' should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women's reproductive capacities.

36 Consultation Question 29:

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

N/A

39 Consultation Question 32:

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

40 Consultation Question 33:

No

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Other

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Other

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

41 Consultation Question 34:

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Please provide your views below:

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Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Other

Please provide your views below:

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as ‘surrogates.’

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

43 Consultation Question 36: We invite consultees’ views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the ‘new pathway’. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

45 Consultation Question 37: We invite consultees’ views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

I profoundly disagree with the proposals for the ‘new pathway’. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

46 Consultation Question 38: We invite consultees’ views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Other

Please provide your views below:

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Yes

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

55 Consultation Question 47:

Yes

Please provide your views below:

Not Answered

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

57 Consultation Question 49:

Other

Please provide your views below:

Information about the child's heritage could give pertinent information about their likelihood of disease risk and genetically inherited disorders. Therefore I do not believe that this information should ever be withheld from them or made inaccessible.

Please provide your views below:

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

YES, this should be possible.

59 Consultation Question 51:

Yes

Please provide your views below:

Please provide your views below:

YES, I agree.

60 Consultation Question 52:

Please provide your views below:

YES

Please provide your views below:

Yes

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

63 Consultation Question 55:

No

Please provide your views below:

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

No

Please provide your views below:

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

Please provide your views below:

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

65 Consultation Question 57:

Please provide your views below:

The qualifying categories of relationship should not be reformed or removed.

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Other

Please provide views below:

I profoundly disagree with the proposals for the 'new pathway'.

67 Consultation Question 59:

No

Please provide views below:

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Please provide views below:

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

Yes

Please provide views below:

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

No

Please provide your views below:

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

No

Please provide views below:

I dispute that surrogacy is ever a 'medical necessity.'

70 Consultation Question 62:

Please provide your views below:

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

Please provide your views below:

I dispute that surrogacy is ever a 'medical necessity.'

71 Consultation Question 63:

Other

Please provide your views below:

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

Please provide your views below:

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

Yes

Please provide your views below:

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

72 Consultation Question 64:

No

Please provide your views below:

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

73 Consultation Question 65:

Other

Please provide your views below:

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Other

Please provide your views below:

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

Please provide your views below:

75 Consultation Question 67:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

77 Consultation Question 69:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

No

Please provide your views below:

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

Not Answered

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

81 Consultation Question 73:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical

appointments – backed up by receipts.

82 Consultation Question 74:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

83 Consultation Question 75:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

85 Consultation Question 77:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

86 Consultation Question 78:

Please provide your views below:

N/A.

87 Consultation Question 79:

Please provide your views below:

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Not Answered

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

89 Consultation Question 81:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

90 Consultation Question 82:

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

Not Answered

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

Please provide any views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

91 Consultation Question 83:

Please provide views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Not Answered

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Other

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

95 Consultation Question 87:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

96 Consultation Question 88:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent and against her human rights.

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

N/A

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:

N/A

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

N/A

100 Consultation Question 92: We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?

No

Please provide your views below:

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after

the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

N/A

102 Consultation Question 94:

No

Please provide your views below:

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

No

Please provide your views below:

Yes

Please provide your views below:

Yes

Please provide your views below:

Please provide your views below:

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

No

Please provide your views below:

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

N/A

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Other

Please provide your views below:

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

106 Consultation Question 98: We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

107 Consultation Question 99:

No

Please provide your views below:

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

108 Consultation Question 100:

Please provide your views below:

N/A

Please provide your views below:

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

I do not believe this needs changing.

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

No

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

115 Consultation Question 107:

Please provide your views below:

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself. There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other countries.

Please provide your views below:

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

Please provide your views below:

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by

receipts and overseen by a judge.

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

N/A

Not Answered

If international, in which country did the arrangement take place?:

N/A

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

N/A

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

As set out numerous times within this response, I believe that the normalising the act of of 'surrogacy' (commissioning children for the purpose of exchange) is a violation of the human rights of children and women. For Great Britain to change from an ethical position of legally opposing such criminal acts against humans to one that openly endorses, and even 'encourages' the practice in the UK would set the UK apart from Switzerland, Austria, Norway, France, Germany, Italy, Spain etc. from condemning this unethical practice. If Great Britain wants to remain a place that is conducive of respect of women and children, it must first not turn them into commodities and create industries for their exploitation. For these reasons I oppose any change in the law to bring acceptance to a practice that is unethical on physical, social, economical and psychological grounds for all parties involved in such human rights violations.

120 Consultation Question 112:

Please provide your views below:

N/A

Please provide your views below:

N/A

121 Consultation Question 113:

Please provide your views below:

N/A

Please provide your views below:

N/A

122 Consultation Question 114:

Please provide your views below:

N/A

123 Consultation Question 115:

Please provide your views below:

N/A

Please provide your views below:

N/A

124 Consultation Question 116:

Not Answered

Please provide your views below:

N/A

Please provide your views below:

N/A

Please provide your views below:

N/A

Please provide your views below:

N/A

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

N/A

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Bolton University

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response
- This is a response on behalf of an organisation
- Other

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Surrogate
- Intended parent
- Person born of a surrogacy arrangement
- Family member of a surrogate
- Family member of an intended parent
- Legal practitioner
- Medical practitioner or counsellor
- Social worker
- Academic
- Other individual

5. What is your email address?

Email address:

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

(1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and

(2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration.

Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,

- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

- 1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;

- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in

surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or

parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Paragraph 8.77

Consultation Question 17.

1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

- 1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

- 1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

- 1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

- 1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

- 1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

- 1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

- 1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

- 1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 03:07:04

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Legal practitioner

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Other

Please provide your views below:

International surrogacy arrangements should be discouraged. The exploitation of women in other jurisdictions is against public policy in those jurisdictions and in ours.

Furthermore, the cost of such arrangements should not fall on taxpayers in the UK and the costs of representation for the child should be paid by those seeking orders in their favour.

However, I agree that where such arrangements do take place, under no circumstances should the process be considered suitable for consideration by a lower court.

Please provide your views below:

No. International surrogacy arrangements should be strongly discouraged and where people continue to indulge in them, they should come before the High Court.

It is quite clear that Orders regarding a person's parenthood are of the utmost significance to that person and should be heard at High Court level at the least

9 Consultation Question 2:

Please provide your views below:

This question is not appropriate for a consultation which is open to the public. It is quite clear that Orders regarding a person's parenthood are of the utmost significance to that person and should be heard at High Court level at the least

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

Other

Please provide your views below:

The whole premise of this consultation is misconceived and wrong and the consultation paper should be withdrawn. You have started from the position that because surrogacy occurs in the UK, there is desirability for the 'market' in human life to be better regulated. You should have considered the issue as a whole and in particular whether the ban on all forms of surrogacy that was enacted in Sweden in 2016 and Spain in 2018 could provide a model for reform and not just the systems operating in jurisdictions where women's rights are lagging behind those of other countries, such as India and Thailand.

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Yes

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

No

Please provide your views below:

It is absolutely crucial that individuals are not able to contract out of such a fundamental pillar of our law. A child's mother is and always should be in law, the person that gave birth to her or him. It is abhorrent to even consider that a woman could be delivered of a child that she has carried through pregnancy, and not automatically be recognised in law as the mother of that child.

You appear not to have considered the wider societal impact of making such a radical change, apparently in consideration of a tiny number of people who want their private contractual arrangements for the acquisition of a human being to be more convenient for them. This is despite the fact that your consultation paper acknowledges that the UN Special Rapporteur recommends the opposite and that parental responsibility should always be vested in the woman giving birth.

15 Consultation Question 8:

Yes

Please provide your views below:

The way the question is framed makes it impossible to answer in the way I wish to. I fundamentally disagree with the proposed new pathway and thus that 'regulated surrogacy organisations' should be party to them.

However, it is of course of the utmost importance that records of such arrangements are maintained accurately, over a number of years, so that all children born as a result of a surrogacy arrangement, will be able to access details about it.

Another period

Please provide your views below:

No time limit, the same as for birth and death registers

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Yes

Please provide your views below:

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

I fundamentally and profoundly disagree with your 'new pathway' and urge you to consider the responses to this consultation from the standpoint that the 'new pathway' may not be the right approach for the UK and in fact should be scrapped.

The consultation breaches the Nolan principles, and you did not take views from enough people to satisfy the public that the 'demand for change' exists and even if it does, should be met.

18 Consultation Question 11:

No

Please provide your views below:

Again, the framing of the question makes it impossible to answer fully and properly by indicating yes or no. However, I have answered no because I fundamentally, profoundly disagree with any proposal that requires a post partum woman, who is likely to have had a caesarean section, and will be experiencing sustained emotional upheaval as her body adjusts to the fact that her pregnancy has ended but she has no baby to care for, should be forced to make such a critical decision under pressure of time.

Given the additional risks posed to a pregnant woman in gestating an embryo which was not made with her own eggs, she may not be well enough to be in a position to make decisions with life long ramifications for her and the child she has given birth to, which whether or not she is genetically related to, is flesh of her flesh and blood of her blood. I am appalled at the way you propose to detach the women who give birth in this way from the babies that they have grown and nurtured.

19 Consultation Question 12:

Other

Please provide your views below:

All surrogate mothers should remain legally the mother of the child they give birth to until the Court makes an Order otherwise

20 Consultation Question 13:

No

Please provide your views below:

Again, a three part question, badly worded, to which a yes or no answer isn't really possible. As I progress through the questions, I am increasingly concerned with the viability of this consultation as a means of gathering information from the general public. I am a lawyer and the questions are difficult to read, difficult to answer and refer to a 502 page document. It's wholly inappropriate.

The questions should offer the option to reply on the basis that one fundamentally, profoundly disagrees with your proposed new pathway.

For the avoidance of doubt, it should NEVER be the business of the people commissioning the gestation of a child by a woman, to comment on that woman's capacity to make decisions about her pregnancy and parenthood of the child she delivers.

The total lack of acknowledgement by you in the paper and in these questions, of the huge and obvious potential for women to be exploited by a surrogacy arrangement, is truly baffling

21 Consultation Question 14:

Not Answered

Please provide your views below:

The Special Rapporteur's also recommended that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration.

A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. The type of people who will potentially take advantage of a woman of lower socio economic status, to pay for her reproductive labour and to make her child the subject of a transaction, without any obligation to consider the physical and emotional effects on her, are not 'regular' parents and should be subject to scrutiny. The horrific behaviour of the commissioning parents in Re Z [2016] EWFC 34 is a case in point.

22 Consultation Question 15:

Other

Please provide your views below:

Agree that the surrogate should be able to object to both commissioning parents having parenthood

Not Answered

Please share your views below:

23 Consultation Question 16:

Not Answered

Please provide your views below:

No

Please provide your views below:

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

No

Please provide your views below:

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

Good grief. A woman has died as a result of undertaking a risky physical process and you seem to be suggesting that it would be wrong in some way to hand her child over - the transaction must be completed even if things go catastrophically wrong for her, her family, her spouse, her other children? My views are that this is abhorrent and any widening of surrogacy as a practice simply normalises the devaluing of motherhood, and strips the surrogate mother of her dignity, autonomy and integrity.

Absolutely horrific question. The fact you even have to ask it should give you serious pause for thought about what you are proposing here

26 Consultation Question 19:

No

Please provide your views below:

Please provide your views below:

27 Consultation Question 20:

Not Answered

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.

29 Consultation Question 22:

Please provide your views below:

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.

30 Consultation Question 23:

Please provide your views below:

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

31 Consultation Question 24:

Please provide your views below:

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation that the child's best interest is the paramount consideration.

I therefore do not believe any other factors should be added.

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

No, they should not be able to apply for an Order without leave.

Surrogacy is an exploitative process with potential for huge abuses and for lasting trauma to the mother and child. It is absolutely appropriate and desirable for those who wish to enter into a contractual arrangement that places another human being at significant risk of physical and emotional harm, to be scrutinised by the Court

33 Consultation Question 26:

No

Please provide your views below:

I profoundly disagree with this proposal.

The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as recommended by the UN Special Rapporteur, in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

34 Consultation Question 27:

No

Please provide your views below:

I profoundly and vehemently disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as recommended by the UN Special Rapporteur, in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Other

Please provide your views below:

I agree that the birth mother should have parental responsibility for the child but NOT that the 'intended parents' should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women's reproductive capacities.

36 Consultation Question 29:

Please provide your views below:

No it would not be appropriate to start putting limits on what 'parental responsibility' means, as your question clearly refers to the birth mother of the child being prevented from having the same rights as any other mother with parental responsibility, simply because the commissioning parties want her to contract out of them. For their benefit, not hers or the child's.
Many parents do not live with their child but still have full parental responsibility. The birth mother's PR should only end with her freely given consent and by subsequent Order of the Court

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Other

Please provide your views below:

I profoundly and vehemently disagree with widening and normalising the practice of surrogacy in this country due to the human rights concerns it presents, and the ongoing potential for women to be exploited and physically and psychologically harmed by taking part in it, and for babies to be trafficked or born by surrogacy so that the commissioning parties could avoid the safeguarding checks they would be required to undergo if they were adopting

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

39 Consultation Question 32:

Please provide your views below:

I profoundly and vehemently disagree with widening and normalising the practice of surrogacy in this country due to the human rights concerns it presents, and the ongoing potential for women to be exploited and physically and psychologically harmed by taking part in it, and for babies to be trafficked or born by surrogacy so that the commissioning parties could avoid the safeguarding checks they would be required to undergo if they were adopting

Please provide your views below:

40 Consultation Question 33:

No

Please provide your views below:

What kind of organisation could ever be trusted to 'regulate' contracts by which human beings are bought and sold?

Will this organisation carry out due diligence on surrogates to ensure that they are not vulnerable, and being coerced into carrying out reproductive labour for others?

We should not be normalising this process, and I have deep misgivings about your approach to it. The fact that there is a market for women's reproductive labour absolutely does not mean we have to acknowledge the existence of the market, and facilitate it. There is no right to be a parent. However, living women have the right to be viewed as fully human and not just a 'host'. The absence of any empathy for women in your consultation paper is so disappointing, and very, very concerning

Other

Please provide your views below:

I object to the principle of a 'surrogacy organisation' and to any 'regulation' which normalises the exploitation inherent in surrogacy.

Other

Please provide your views below:

I object to the principle of a 'surrogacy organisation' and to any 'regulation' which normalises the exploitation inherent in surrogacy.

41 Consultation Question 34:

Please provide your views below:

Please provide your views below:

Please provide your views below:

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Not Answered

Please provide your views below:

I object to the principle of a 'surrogacy organisation' and to any 'regulation' which normalises the exploitation inherent in surrogacy.

Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Not Answered

Please provide your views below:

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

I object to the principle of a 'surrogacy organisation' and to any 'regulation' which normalises the exploitation inherent in surrogacy.

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Other

Please provide your views below:

I object to the principle of a 'surrogacy organisation' and to any 'regulation' which normalises the exploitation inherent in surrogacy.

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Yes

Please provide your views below:

Yes - unless we're bringing Solomon back to carve babies up and give half to each party to the contract...

A contract involving a human life should not be enforceable

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution. The inside of a woman's body is not a workplace.

Commercial surrogacy is abhorrent in principle. That someone should profit from procuring a pregnancy and transferring 'ownership' of the resulting baby, is repugnant.

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

Advertising? You are asking if I want to see Facebook ads with enticing 'two for one' deals - no extra charge for a twin pregnancy? Ads offering a full refund if the foetus dies before 24 weeks gestation ? Ads offering fully insured legal costs for when the commissioning party sues for you having alcohol during your pregnancy, or declining a scan that would have revealed a birth defect thus costing them the opportunity to demand you abort the pregnancy?

Are you serious? This is a hideous, chilling, suggestion. You are the LAW COMMISSION for goodness sake. We weren't even allowed to advertise legal services until 10 years ago!

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Other

Please provide your views below:

I oppose any system in which the woman who gave birth to the child is excised or expunged from the public record as having done so.

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

I do not consider the birth registration system needs reform. I am opposed to changes to allow three parents to be registered. Commissioning parties need to get real about this - the woman who carries the child and gives birth to it is hugely significant and the fact of her involvement should be a matter of public record.

I am vehemently opposed to any dilution of the concept of the mother of a child being the woman who gave birth to that child, whatever private arrangements people enter into, and whatever private struggles they may have had which brought them to surrogacy, are not in any way a valid reason for eroding the status and rights of woman as mothers of the children they gestate and deliver

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

55 Consultation Question 47:

Yes

Please provide your views below:

Other

Please provide your views below:

Of course every child should have access to information about their birth and their parentage. The courts have recognised the importance of this not least because a child should have the right to knowledge about their genetic background

Where surrogacy takes place, this should be respected and the conception of children using anonymous donor gametes should be strongly discouraged

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

I believe the child should have the right to identifying information about their birth mother, and non identifying information about the providers of gametes

57 Consultation Question 49:

Yes

Please provide your views below:

Please provide your views below:

Yes this seems appropriate

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

Yes, of course this should be possible

59 Consultation Question 51:

Yes

Please provide your views below:

Please provide your views below:

Yes, this seems humane and appropriate

60 Consultation Question 52:

Please provide your views below:

Yes

Please provide your views below:

Difficult, but on the whole yes, agree

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

No, but there should be liberty to make a preliminary application for permission to make an application out of time and the Court can hear the reasons for the time limit being breached

63 Consultation Question 55:

Not Answered

Please provide your views below:

No

Please provide your views below:

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

Other

Please provide your views below:

I disagree with your 'new pathway' and with any expansion or normalisation of surrogacy, something which the European Parliament recognises has condemned in its annual report of 2014. The section on "Rights of woman and girls", sub paragraph 114 states that the EP:

"Condemns the practice of surrogacy, which undermines the human dignity of the woman since her body and its reproductive functions are used as a commodity; considers that the practice of gestational surrogacy which involves reproductive exploitation and use of the human body for financial or other gain, in particular in the case of vulnerable women in developing countries, shall be prohibited and treated as a matter of urgency in human rights instruments"

Inevitably, if you allow a surrogacy market here (which despite your response to my FOI request denying that you were proposing commercial surrogacy, is what you are proposing), then tourists from all over the world will flock here instead and poor, vulnerable women will be trafficked in to meet demand.

Please provide your views below:

The presence of this question makes it clear that you are well aware that a market for surrogacy tourism will inevitably follow the opening up and regulation of the market for commercial reasons.

How can it be that the Law Commission would want to proceed with reforms which will put women and children at risk of exploitation, abuse, physical harm (including death), emotional trauma; and which the European Parliament acknowledges is a serious human rights issue??

65 Consultation Question 57:

Please provide your views below:

NO reforms needed to the qualifying categories of relationship

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Other

Please provide views below:

I disagree with your proposed new pathway. I note this is another question which implicitly acknowledges the grave danger of children being born to be trafficked to another household or 'parents' who might not be awarded parental responsibility by the Court, for many reasons including safeguarding.

There is no need for these aspects to be considered. The consultation paper is flawed in not explaining properly how and why the calls for reform have emerged and how and why it was decided that the market needed to be regulated in existence instead of legislated OUT of existence

67 Consultation Question 59:

No

Please provide views below:

Of course a genetic link should be maintained if a surrogate pregnancy takes place. There is never a 'medical necessity' to have a child.

Please provide views below:

Other

Please provide views below:

I profoundly disagree with UK citizens choosing to travel abroad to take advantage of economically disadvantaged women in other jurisdictions and then removing children from their country of birth

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

Not Answered

Please provide your views below:

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

Not Answered

Please provide views below:

70 Consultation Question 62:

Please provide your views below:

Please provide your views below:

71 Consultation Question 63:

Yes

Please provide your views below:

Subject to my deeply held objection to the expansion and normalisation of an exploitative and dehumanising practice, in principle i can see that this would be preferable

Please provide your views below:

Not Answered

Please provide your views below:

72 Consultation Question 64:

No

Please provide your views below:

Of course there should be a maximum age limit. I accept it would need to be set carefully but the ethics of allowing elderly wealthy people to pay younger women to gestate a baby that they may have difficulty caring for and perhaps leave as orphans while they are still young, are extremely problematic

An upper age limit would prevent this idea/practice being normalised

Please provide your views below:

50 but please note I am opposed to the widening and normalisation of an inherently exploitative process

No

Please provide your views below:

73 Consultation Question 65:

Other

Please provide your views below:

18 is far far too young to be undergoing the physical and emotional upheaval of a pregnancy when you are not going to be a full time parent at the end of it. The inside of a teenager's body should never be a workplace. Women should be strongly discouraged from even considering surrogacy until they have had a child. I vehemently oppose young women being used in this way, they will be under pressure to 'do it' to pay off college debts, pay for education, get money to get on the housing ladder etc

the birth of your first child is a profound, life changing experience and should absolutely not be the subject of a contract

No

Please provide your views below:

They really need to be at least 25, and have at least one child of their own

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Other

Please provide your views below:

The proposed new pathway does not have my support.

Please provide your views below:

75 Consultation Question 67:

Not Answered

Please provide your views below:

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Not Answered

Please provide your views below:

77 Consultation Question 69:

Not Answered

Please provide your views below:

I am vehemently opposed to the normalising of surrogacy and the widening of an inherently exploitative and dehumanising process

Please provide your views below:

I am vehemently opposed to the normalising of surrogacy and the widening of an inherently exploitative and dehumanising process

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

while I am vehemently opposed to the normalising of surrogacy and the widening of an inherently exploitative and dehumanising process, as i have stated above, this seems sensible

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.Do consultees agree?

No

Please provide your views below:

Of course there should be a maximum number of pregnancies, or you know very well what will happen - vulnerable women will be coerced into undertaking multiple pregnancies and will be at greatly increased risk of death, or serious physical harm, and/or serious emotional harm

it's almost like you haven't thought AT ALL about the effects on a woman's body (and mental state) of pregnancy and birth. It is shocking, the total lack of empathy for the women without whom this process could not exist.

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

Not Answered

Please provide your views below:

I'm certainly not in favour of your proposal that she would end up with less than minimum wage. Payment should be a reasonable hourly rate (£50) to reflect the risk and discomfort, and should be for every single hour of the pregnancy, plus all expenses and should continue during the fourth trimester,

when the mother will be recovering from surgery

However, because that would require a well deserved payment of over £430k, I can't see you going for that somehow.

The problem with a market in women's reproductive labour (where you propose teenagers should be able to embark on a long career of repeated dangerous pregnancies), is that if you pay too much, women suffer. If you pay too little, women suffer. If you don't pay at all, women suffer. It just depends at whose hands.

Perhaps we should just reconsider your whole pathway and whether or not we want a market in human life underpinned by unhappy women? Yes i know you can point to a few outliers who say they had no emotional financial or physical pressures and it was all great being a surrogate but i would like to suggest that those women shouldn't necessarily be the benchmark for establishing whether women as a whole in England and Wales will be damaged by this becoming an established industry.

81 Consultation Question 73:

Please provide your views below:

Please see my response above

82 Consultation Question 74:

Please provide your views below:

See above - the surrogate mother would deserve a hell of a lot more cash for her labour than 99% of commissioning parties could afford.

So perhaps buying this labour is not something we as a society should be encouraging. The essence of our human dignity is that we are not commodities

83 Consultation Question 75:

Please provide your views below:

The surrogate mother would deserve a hell of a lot more cash for her labour than 99% of commissioning parties could afford.

So perhaps buying this labour is not something we as a society should be encouraging. The essence of our human dignity is that we are not commodities

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

The surrogate mother would deserve a hell of a lot more cash for her labour than 99% of commissioning parties could afford.

So perhaps buying this labour is not something we as a society should be encouraging. The essence of our human dignity is that we are not commodities and the inside of a woman's body is not a workplace.

85 Consultation Question 77:

Please provide your views below:

The surrogate mother would deserve a hell of a lot more cash for her labour than 99% of commissioning parties could afford.

So perhaps buying this labour is not something we as a society should be encouraging. The essence of our human dignity is that we are not commodities

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

pain and inconvenience arising from the pregnancy and childbirth;; medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or, specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

Please provide your views below:

It's almost like it's quite a bad idea to commoditise the process of pregnancy and childbirth....

Please provide your views below:

The surrogate would deserve a hell of a lot more cash for her labour than 99% of commissioning parties could afford.

So perhaps buying this labour is not something we as a society should be encouraging. The essence of our human dignity is that we are not commodities

Not Answered

Please provide your views below:

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

Women die from carrying pregnancies, and there's an increased risk of serious complications when the embryo is not genetically related to them. So why are you trying to open up this market? What other 'way of making a family' for some people, puts others at risk of serious physical and emotional trauma?

I'm with Sweden, who've banned all forms of surrogacy, and with the European Parliament, who condemned it as exploitative of women and undermining of their human dignity

89 Consultation Question 81:

Please provide your views below:

90 Consultation Question 82:

Not Answered

Please provide your views below:

Women die from carrying pregnancies, and there's an increased risk of serious complications when the embryo is not genetically related to them. So why are you trying to open up this market? What other 'way of making a family' for some people, puts others at risk of serious physical and emotional trauma?

I'm with Sweden, who've banned all forms of surrogacy, and with the European Parliament, who condemned it as exploitative of women and undermining of their human dignity

Not Answered

Please provide your views below:

Women die from carrying pregnancies, and there's an increased risk of serious complications when the embryo is not genetically related to them. So why are you trying to open up this market? What other 'way of making a family' for some people, puts others at risk of serious physical and emotional trauma?

I'm with Sweden, who've banned all forms of surrogacy, and with the European Parliament, who condemned it as exploitative of women and undermining of their human dignity

Please provide any views below:

99% of commissioners couldn't afford what a surrogate mother would deserve to be paid

Women die from carrying pregnancies, and there's an increased risk of serious complications when the embryo is not genetically related to them. So why expand this market? What other way of 'building a family', puts someone else at risk of serious physical and emotional trauma?

I'm with Sweden, who've banned all forms of surrogacy, and with the European Parliament, who condemned it as exploitative of women and undermining of their human dignity

91 Consultation Question 83:

Please provide views below:

oh my word. NO!!!!!! These questions are hideous - how can the Law Commission not see how undermining of the human dignity of all involved these scenarios are?

Not Answered

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Not Answered

Please provide your views below:

Women die from carrying pregnancies, and there's an increased risk of serious complications when the embryo is not genetically related to them. So why expand this market? What other way of 'building a family', puts someone else at risk of serious physical and emotional trauma?

I'm with Sweden, who've banned all forms of surrogacy, and with the European Parliament, who condemned it as exploitative of women and undermining of their human dignity

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

95 Consultation Question 87:

Please provide your views below:

96 Consultation Question 88:

Not Answered

Please provide your views below:

Other

Please provide your views below:

What a horrible, horrible prospect. The surrogate mother's bodily autonomy totally compromised. I completely oppose your 'new pathway'

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

100 Consultation Question 92: We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?

No

Please provide your views below:

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

102 Consultation Question 94:

No

Please provide your views below:

STOP INTERNATIONAL SURROGACY stop UK citizens subverting the letter and spirit of our laws and exploiting women in other countries, leaving the rest of us to pick up the costs of regulating that child's citizenship

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Please provide your views below:

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

No

Please provide your views below:

This would create an obvious risk of the process being abused and children being sold

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

No

Please provide your views below:

STOP INTERNATIONAL SURROGACY NOW stop UK citizens subverting the letter and spirit of our laws and exploiting women in other countries

106 Consultation Question 98: We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood. Do consultees agree?

Other

Please provide your views below:

stop UK citizens subverting the letter and spirit of our laws and exploiting women in other countries - NO to international surrogacy

107 Consultation Question 99:

Not Answered

Please provide your views below:

108 Consultation Question 100:

Please provide your views below:

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Other

Please provide your views below:

When a woman gives birth, she needs time to recover. A surrogate mother is entitled to an allowance, paid for by the commissioning parties.

111 Consultation Question 103:

Please provide your views below:

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

The commissioning parties are most likely to be 2 men so questions of pregnancy or breastfeeding don't apply? They will take leave in other ways?

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

Midwives should not be asked to accommodate surrogacy arrangements. It must be distressing for them to assist a woman giving birth to a baby she had agreed to give away - what if she changes her mind and needs support?

We could avoid having to deal with safeguarding issues either, by banning the practice as a whole

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

I will be writing to you about this separately because it has taken me too long to fill out this form.

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Why haven't you asked any questions of women who have been surrogate mothers and had a bad experience. There are many stories i have read alongside reading the consultation paper, where they are not reflected - although when you do note the life changing consequences e.g. for women in India who are shunned by their village, your cavalier attitude to them is distressing.

Your questions in this section are completely slanted to sympathise with 'intended parents' and not with women who have undergone this hugely emotionally and physically draining process.

Again, I will write to you about this separately.

Surrogacy Consultation Questions

Email the completed document to surrogacy@lawcommission.gov.uk before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

N/A

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

Other individual

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[REDACTED]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

- 1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

- 1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

- 1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

- 1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and

parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth

and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (check box)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the ‘intended parents’ to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur’s recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child’s country of birth.

Do consultees agree?

NO

Allowing the ‘intended parents’ to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur’s recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 08:04:43

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

Stowe Family Law

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Legal practitioner

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Will anonymise any client experiences.

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

Judges at lower levels of the judiciary in my experience do not have the knowledge/training/experience to deal with these cases in a streamlined manner. For example, in one case I had some loose involvement with (a UK arrangement) the intended parents ended up having four hearings before a Circuit Judge, the surrogate was ordered to do a full statement and attend all court hearings which was simply not necessary for what was a straightforward arrangement.

Please provide your views below:

If this is the view of the Commission, thought needs to be given to training circuit judges appropriately. The other issue is availability, in my local area circuit judges are listing cases months in advance and this is not helpful for intended parents.

9 Consultation Question 2:

Please provide your views below:

I think the magistrates can continue to hear domestic surrogacy cases, although as above, better training would be helpful.

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

Yes

Please provide your views below:

Yes, I think this would offer intended parents peace of mind in those early months and also recognise the reality of the situation which is that ultimately the intended parents are the people looking after the baby on a day to day basis.

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Yes

Please provide your views below:

Completely agree.

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

Yes

Please provide your views below:

15 Consultation Question 8:

Yes

Please provide your views below:

Although I do believe thought needs to be given to what happens is surrogacy organisations fold and no longer exist. Should there be a central database kept with the HFEA for example.

Another period

Please provide your views below:

100 years feels too long, although is helpful when looking back at heritage. I wonder if 50 years would be more realistic/appropriate.

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Yes

Please provide your views below:

While this may frustrate some intended parents, I feel the interests of the child need to be put first which is that openness and honesty is the best policy when it comes to donor conception.

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

I believe it should prevent it, and they will then have to apply for a parental order in the standard way instead.

18 Consultation Question 11:

Yes

Please provide your views below:

I agree. My initial thoughts on this were that I didn't think the surrogate should have a right to object but having heard the reasoning behind this at the consultation event I attended, I think that it is suitable to have a period of time for her to object. If she does object, then the parents should make an application for a parental order to the Courts and the Court can then consider whether to dispense with her agreement (as per the proposals). I think this is suitable and appropriate as it means in circumstances where a surrogate objects for perhaps more petty reasons, the Court can identify this and consider what is in the best interests of the child.

19 Consultation Question 12:

Yes

Please provide your views below:

As above.

20 Consultation Question 13:

Yes

Please provide your views below:

21 Consultation Question 14:

Other

Please provide your views below:

I'm not sure the surrogacy organisation can be responsible for this, I'm just not sure how this would work in practice having seen the workings of an organisation in my previous role and where that would fit, but I feel this instead feels appropriately carried out by the regulated clinic. If there are concerns at all, I wonder if it should then fall out the pathway and a PO needs to be applied for in which CAFCASS can do a report as is the way at the moment.

22 Consultation Question 15:

Yes

Please provide your views below:

This is one point everyone seems to be at one on, that the surrogates partner should never be recognised.

No

Please share your views below:

23 Consultation Question 16:

Yes

Please provide your views below:

I think this is really important as in these worst case scenarios, there is even more need of a structured and clear legal position so everyone knows where they stand, and in these circumstances I think it is important that the IP's are recognised as the legal parents and not the surrogate.

Yes

Please provide your views below:

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

Yes

Please provide your views below:

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

I think a parental order would need to be made.

26 Consultation Question 19:

Yes

Please provide your views below:

This will ease matters for the IP's family and will mean it is more straightforward for guardians to be appointed etc.

Please provide your views below:

27 Consultation Question 20:

Not Answered

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

I don't think there should be a three-parent model, I think it needs to be the intended parents alone.

29 Consultation Question 22:

Please provide your views below:

30 Consultation Question 23:

Please provide your views below:

I don't think the checklist needs to be amended.

31 Consultation Question 24:

Please provide your views below:

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

I agree with this.

33 Consultation Question 26:

Yes

Please provide your views below:

34 Consultation Question 27:

Yes

Please provide your views below:

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Yes

Please provide your views below:

36 Consultation Question 29:

Please provide your views below:

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Not Answered

Please provide your views below:

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

39 Consultation Question 32:

Please provide your views below:

Please provide your views below:

40 Consultation Question 33:

Yes

Please provide your views below:

Yes

Please provide your views below:

Yes

Please provide your views below:

41 Consultation Question 34:

representing the organisation to, and liaising with, the regulator;; managing the regulated surrogacy organisation with sufficient care, competence and skill;; ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;; training any staff, including that of the person responsible; and, providing data to the regulator and to such other person as required by law.

Please provide your views below:

Please provide your views below:

Please provide your views below:

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Yes

Please provide your views below:

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Yes

Please provide your views below:

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Yes

Please provide your views below:

I think this is essential.

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Yes

Please provide your views below:

Other than the financial side of things.

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

Yes

Please provide your views below:

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

Yes

Please provide your views below:

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

No

Please provide your views below:

I have lots of IP's who are concerned about this due to religious reasons and because while they are keen to tell their child they do not want wider family to be aware.

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

55 Consultation Question 47:

Yes

Please provide your views below:

Yes

Please provide your views below:

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

57 Consultation Question 49:

Not Answered

Please provide your views below:

Please provide your views below:

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

59 Consultation Question 51:

Not Answered

Please provide your views below:

Please provide your views below:

60 Consultation Question 52:

Please provide your views below:

Please provide your views below:

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

Agreed. Although I think there should be guidance which encourages IP's to apply as soon as possible.

63 Consultation Question 55:

Yes

Please provide your views below:

Yes

Please provide your views below:

I think this will give far more reassurance to IP's if the Court has the power to do this and I think this is much needed.

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

Yes

Please provide your views below:

Please provide your views below:

1 year

65 Consultation Question 57:

Please provide your views below:

I don't think this area needs to be reformed, I think the existing position fits in 99% of cases.

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Yes

Please provide views below:

Important for safeguarding.

67 Consultation Question 59:

Yes

Please provide views below:

Please provide views below:

I think it should be permitted. Clinics can consider whether they would treat by way of their ethics committee etc. and so I think the restriction can be lifted and double donation should be allowed in both cases (although not international cases).

Yes

Please provide views below:

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

Yes

Please provide your views below:

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

Yes

Please provide views below:

70 Consultation Question 62:

Please provide your views below:

I disagree with this. There are circumstances in which carrying a child is simply not possible, for reasons other than medical necessity and so I do not feel a restriction should be placed on this. Ultimately people who are doing it out of pure convenience alone won't be able to access surrogacy because surrogates won't want to work with them.

Please provide your views below:

The difficulty in doing this is one of the reasons I don't think this should be introduced. There are various reasons, mental and physical, and I feel defining/assessing these feels too involved/controlling.

71 Consultation Question 63:

Yes

Please provide your views below:

Please provide your views below:

Yes

Please provide your views below:

72 Consultation Question 64:

Yes

Please provide your views below:

Please provide your views below:

No maximum.

Yes

Please provide your views below:

73 Consultation Question 65:

Yes

Please provide your views below:

Yes

Please provide your views below:

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Yes

Please provide your views below:

Please provide your views below:

DNA testing.

75 Consultation Question 67:

Yes

Please provide your views below:

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Yes

Please provide your views below:

77 Consultation Question 69:

Yes

Please provide your views below:

Please provide your views below:

Yes.

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

No - a woman may simply decide not to have a child, but that doesn't mean she wouldn't be a brilliant surrogate.

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

Yes

Please provide your views below:

This will be governed in any event by doctors/hospitals and their guidance to women.

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

based on costs actually incurred by the surrogate, but without the need for production of receipts; or

Please provide your views below:

81 Consultation Question 73:

Please provide your views below:

Anything directly relating to the pregnancy - travel, maternity clothes, vitamins.

82 Consultation Question 74:

Please provide your views below:

Yes. Meals, takeaways, home help because she is pregnant.

83 Consultation Question 75:

Please provide your views below:

I think they should be permitted.

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

Yes.

85 Consultation Question 77:

Please provide your views below:

Yes.

86 Consultation Question 78:

Please provide your views below:

No experience. Have had people consider using surrogates with benefits but then ultimately chosen not to move forward because of concerns about this. Definitely needs some clarity.

87 Consultation Question 79:

pain and inconvenience arising from the pregnancy and childbirth; medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or, specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

Please provide your views below:

Please provide your views below:

The most important thing is that the law should be pro-choice. The intended parents and surrogate can agree an amount between them that they are both comfortable with. If this includes an element of compensation and is accepted then so be it.

left to the parties to negotiate.

Please provide your views below:

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

Yes.

89 Consultation Question 81:

Please provide your views below:

Yes. No restriction on this.

90 Consultation Question 82:

It should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

Please provide your views below:

any sum agreed between the parties to the surrogacy; or

Please provide your views below:

essential costs relating to the pregnancy;; additional costs relating to the pregnancy;; lost earnings;; compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or, gifts.

Please provide any views below:

91 Consultation Question 83:

Please provide views below:

Yes, I think there should be a percentage reduction for the time that the surrogate was pregnant. Similar to how it works in the US.

to any miscarriage or termination; or

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Yes

Please provide your views below:

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

Should be pro-choice.

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

95 Consultation Question 87:

Please provide your views below:

No enforcement should be required as the payments should be a matter for the surrogate/IP's and should be no limitations.

96 Consultation Question 88:

Yes

Please provide your views below:

Yes

Please provide your views below:

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

I regularly used to do this in my previous role, and my experience was always that it was lengthy and painful. A huge number of documents were required by the Home Office/Passport Office, but often additional documents would be requested for no reason. It often seemed to be down to luck as to who received your application. The Home Office were significantly quicker than the Passport Office but this was because there appeared to be a designated team of 2 people at the time who regularly dealt with surrogacy cases and so I marked all my applications for their attention. The Passport Office was sporadic, sometimes (particularly in US cases) we could receive the passport within a few weeks, sometimes in others (such as Ukraine/Georgia and previously India) it took weeks with random, additional documents being requested and no reason/explanation given. It is incredibly stressful for IP's who just want to get home/do things in the right way.

100 Consultation Question 92: We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?

Yes

Please provide your views below:

I agree, but the crucial thing is going to be providing training to the Home Office/Passport Office so they understand these applications and know how to deal with them. Provided this is done, there may be no need for a file to be opened prior (although this does seem very sensible.).

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

102 Consultation Question 94:

Yes

Please provide your views below:

Yes

Please provide your views below:

Yes

Please provide your views below:

Yes

Please provide your views below:

Please provide your views below:

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will

need to be completed after the birth of the child.Do consultees agree?

Not Answered

Please provide your views below:

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Yes

Please provide your views below:

As above, a guide for employees of the immigration services also so they understand.

106 Consultation Question 98: We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.Do consultees agree?

Yes

Please provide your views below:

107 Consultation Question 99:

Yes

Please provide your views below:

108 Consultation Question 100:

Please provide your views below:

Generally after having received advice I have found that foreign IP's choose not to use the UK as a destination for surrogacy as the surrogate would not be happy remaining the legal mother as they are not eligible for a parental order. I don't think we want to make the UK a destination for surrogacy in any event.

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

If the surrogate's partner is not going to be recognised then I don't think they should be eligible for paternity leave.

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Yes

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

I've always understood this to work okay for my clients as it is.

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

Yes.

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Further guidance would be sensible as there is still a mismatch of experiences.

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

1) my charges for an advice meeting on this and to ensure that they meet the requirements would be £400 plus VAT. (£480 in total).

2) Would likely be in the region of £1,500 to £3,000 plus VAT with a fixed fee being offered in most circumstances.

121 Consultation Question 113:

Please provide your views below:

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

Please provide your views below:

Please provide your views below:

Please provide your views below:

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

██████████

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

N/A

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Medical practitioner or counsellor

5. What is your email address?

Email address:

████████████████████

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

██████████

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential.

As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Consultation Question 3.

- 1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

1.9 We invite consultees' views as to what the length of that period should be: whether 100

years or another period.

Paragraph 8.14

Consultation Question 9.

1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the ‘intended parents’ should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur’s recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child’s best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the ‘new pathway’ – particularly with the ‘intended parents’ acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth

and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN

Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not

hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside

the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Paragraph 8.77

Consultation Question 17.

- 1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

- 1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

- 1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

- 1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

- 1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child

concerned or to supply the name and contact details of the other intended parent;

- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:
 - (a) administrative, or

(b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered

and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system

that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and
- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the ‘new pathway’. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other

competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to

be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

None of the above

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase

in surrogacy, which I consider a violation of the human rights of both women and children.

- 1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

- 1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

- 1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

- 1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Consultation Question 40.

1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women’s prostitution.

Paragraph 9.135

Consultation Question 42.

1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other ‘service’ organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

- 1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

- 1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of

the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or

outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:

- (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child

trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

- 1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.' No one has the right to 'obtain' another human's life. Surrogacy is no more a 'right' of an individual than adoption. Children should not be made into commodities; neither should women's wombs be commodified into spaces for rent.

Paragraph 12.71

Consultation Question 61.

- 1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.' Surrogacy is no more a 'right' of an individual than adoption or sex. No one has the right to demand the ownership of another human being. Children should not be made into commodities; neither should women's wombs be commodified into spaces for rent.

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights. I dispute that surrogacy is ever a 'medical necessity.' Surrogacy is no more a 'right' of an individual than adoption (no one should be allowed to demand to adopt either). The rights of the child must remain paramount. Children should not be made into commodities; neither should women's wombs be commodified into spaces for rent.

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.' Surrogacy is no more a 'right' of an individual than adoption (no one should be allowed to demand to adopt either). The rights of the child must remain paramount. Children should not be made into commodities; neither should women's wombs be commodified into spaces for rent.

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or

- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy, I support this condition for a parental order in the circumstances described in both (1) and (2).

- 1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

- 1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy because it is a violation of both women's and children's human rights.

Raising children is demanding and requires parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

- 1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy because I consider it a violation of both women's and children's

human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is

accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother compensation.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Neither of the above.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

None of the above.

I am opposed to paid surrogacy because it commercialises women's reproductive functions,

commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;

- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

None of the above.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent. It highlights how the pregnant women are made into slaves, coerced to restricting themselves to the whims of their owners.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly

disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

(1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or

(2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks **MUST** be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with the wishes of the pregnant women as their patient. From the point of view of health and care professionals the desires of the people, who want to subsequently adopt the baby, are irrelevant throughout the pregnancy, birth and post-natal care, and this would continue until a time that the legal process of adoption was complete.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Guidance should therefore be given to health and care professionals to recognise this form of abuse and how the professionals should respond, including guidance as to whom they should make a referral to protect the pregnant woman from ongoing coercive control. (It would obviously also be necessary to ensure that those working in the criminal justice system are similarly aware.)

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. There is no evidence to show that this could be different for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered by the authors of the consultation questions; there are no questions about this important issue.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself. There appears to have been no evaluation of the size of the additional costs to the NHS and society.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Guidance should therefore be given to health and care professionals to recognise this form of abuse and how the professionals should respond, including guidance as to whom they should make a referral to protect the pregnant woman from ongoing coercive control. (It would obviously also be necessary to ensure that those working in the criminal justice system are similarly aware.)

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by 'partners' and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and
- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or

(c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy should therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is (deliberately?) confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 09:34:21

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Intended parent

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

No

Please provide your views below:

Having experienced such a judgment before the High Court, my wife and I believe that the process is simply not justified on a mandatory basis. If the other proposals in this consultation were adopted, particularly relating to safeguards, we believe the judgment could readily be handled at a lower level of the judiciary.

In simplistic terms, the current requirements tie up the time of high-court judges which could be better used.

Furthermore, the current requirements impose the need to retain a barrister, together with an extremely detailed level of preparation of case law and documentation. Legal support costs and the need to present in London make this a financially taxing obligation.

We do believe, however, that revised legislation should retain provisions for cases to be elevated to the High Court if lower levels of the judiciary are unable to reach a decision for whatever reason.

Finally, we would observe that our own experience before the High Court was actually a pleasant and highly emotional family occasion, thanks to the preparation of our legal team and the evident pleasure of the (female) High Court judge in awarding our parental order.

Please provide your views below:

This would seem to be a sensible approach, provided adequate guidance is provided to said judges.

9 Consultation Question 2:

Please provide your views below:

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

Yes

Please provide your views below:

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Yes

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

Yes

Please provide your views below:

My wife and I would strongly support this approach, in the hope that it stimulates more potential surrogates to come forward and normalises the subject. The proposals appear very sensible.

Significant factors in our decision to pursue surrogacy overseas were a) the very small number of organisations assisting with surrogacy at the time and the associated small pool of surrogates, and b) the perception that surrogacy in the UK appeared to be an almost secretive activity - "don't speak the word too loudly".

15 Consultation Question 8:

Yes

Please provide your views below:

Not Answered

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

No

Please provide your views below:

The reason for such a prohibition remains unclear. My wife and I believe that intended parents and surrogates should be able to make their own decisions based upon risk.

It may be appropriate for the parties to require medical conformation that the donor is free from conditions which could affect the future wellbeing of the surrogate and the child.

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

My wife and I see no reason why the 'mechanics' of the surrogacy act should prevent an individual case from following the new pathway. We believe that intended parents and surrogates should be able to make their own decisions based upon risk.

18 Consultation Question 11:

Yes

Please provide your views below:

19 Consultation Question 12:

Yes

Please provide your views below:

20 Consultation Question 13:

Yes

Please provide your views below:

21 Consultation Question 14:

Yes

Please provide your views below:

While in no way denigrating the role of CAFCASS and their performance in the case of our twin surrogacy, my wife and I wish to convey that this was by far the most stressful aspect of the entire surrogacy journey - including international surrogacy and an extended period overseas.

My wife and I believe that the requirement for a detailed welfare assessment is not justified, although we recognise that this is in line with the process for adoption. All around the UK, people bring children into the world without such an assessment of their suitability and that of their home, many of which births are not desired or intended - in complete contrast to persons who invest such time, emotion and finances in pursuing surrogacy. It therefore seems extremely unfair to make the award of a parental order subject to such assessment.

To have the welfare assessment AFTER living with our children for several months seemed almost akin to cruelty. It felt like a threat to our recent happiness. If a welfare assessment has to happen, it should happen during or before preparation of a surrogacy agreement, under the auspices of a regulated surrogacy body, as proposed in the new pathway.

Naturally we support the continued oversight of parents and children by health visitors, as in any other birth.

22 Consultation Question 15:

Yes

Please provide your views below:

No

Please share your views below:

My wife and I believe that the surrogate's spouse or civil partner should have no legal part to play in any UK surrogacy.

23 Consultation Question 16:

Yes

Please provide your views below:

Yes

Please provide your views below:

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

Yes

Please provide your views below:

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

This appears sensible.

26 Consultation Question 19:

Yes

Please provide your views below:

This approach would allow for family members of the deceased intended parents to decide whether to apply for a parental order in respect of the child.

Please provide your views below:

27 Consultation Question 20:

Yes

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

29 Consultation Question 22:

Please provide your views below:

30 Consultation Question 23:

Please provide your views below:

31 Consultation Question 24:

Please provide your views below:

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

33 Consultation Question 26:

Yes

Please provide your views below:

34 Consultation Question 27:

Yes

Please provide your views below:

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Not Answered

Please provide your views below:

36 Consultation Question 29:

Please provide your views below:

1) Yes

2) Yes

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Yes

Please provide your views below:

I would advocate

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

39 Consultation Question 32:

Please provide your views below:

My wife and I believe this is appropriate.

However, I would advocate some form of arrangement to allow 'in-family' surrogacy, e.g. sister carrying a child for sister, to sidestep some of the requirements such as legal advice and a written surrogacy agreement.

Please provide your views below:

40 Consultation Question 33:

Yes

Please provide your views below:

Yes

Please provide your views below:

Yes

Please provide your views below:

41 Consultation Question 34:

representing the organisation to, and liaising with, the regulator;; managing the regulated surrogacy organisation with sufficient care, competence and skill;; ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;; training any staff, including that of the person responsible; and, providing data to the regulator and to such other person as required by law.

Please provide your views below:

Please provide your views below:

Please provide your views below:

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

No

Please provide your views below:

My wife and I do not believe that this restriction is necessary, provided that for-profit bodies are regulated in the same way as non-profit bodies, and are held accountable to the same standards of performance.

There is a fine line between discouraging widespread market-induced offering of surrogacy services by socially-disadvantaged women and constricting the development as an acceptable approach to family creation.

My wife and I believe that the current non-profit approach may be a factor in the historically low availability of surrogates and may have contributed to the perception of surrogacy as a secretive activity.

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Yes

Please provide your views below:

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

My wife and I believe only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Yes

Please provide your views below:

Please provide your views below:

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Yes

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

Yes

Please provide your views below:

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

Yes

Please provide your views below:

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Other

Please provide your views below:

On balance, I believe this should not be mandatory. Although my wife and I support the guidance to disclose to surrogate children the origin of their birth, we believe it should be the right of the parents to choose whether to do so. The mandatory presence of surrogacy status on the birth certificate may work against those who choose not to disclose.

We believe this should be offered as an option when a birth certificate is issued.

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

55 Consultation Question 47:

Yes

Please provide your views below:

Yes

Please provide your views below:

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

57 Consultation Question 49:

Other

Please provide your views below:

My wife and I believe the standard lower age limit for access to all information (identifying and non-identifying) should be 18, subject to the proposal immediately below.

Please provide your views below:

My wife and I believe this is justified if both conditions 1) and 2) are met.

Condition 3) should only be considered if both legal parents are not available to give consent, e.g. deceased.

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

My wife and I believe this is justified.

59 Consultation Question 51:

Yes

Please provide your views below:

Please provide your views below:

No

60 Consultation Question 52:

Please provide your views below:

Yes

Please provide your views below:

No

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

My wife and I do not believe this is justified.

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

My wife and I support this proposal

63 Consultation Question 55:

Yes

Please provide your views below:

My wife and I support this proposal

Yes

Please provide your views below:

My wife and I support proposal 2), subject to all of the proposed conditions being met.

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

Yes

Please provide your views below:

This proposal should take account of intended parents who, while domiciled in the UK, live or spend a considerable proportion of their time overseas for work or other purposes, and who may not maintain a physical address in the UK.

Please provide your views below:

65 Consultation Question 57:

Please provide your views below:

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Yes

Please provide views below:

67 Consultation Question 59:

Yes

Please provide views below:

Please provide views below:

My wife and I believe there is no justification for not equally applying the same approach to the new pathway and the parental order route in cases of domestic surrogacy.

Yes

Please provide views below:

My wife and I support this proposal on the condition that double donation is accepted in UK surrogacy. International surrogacy would not be as attractive if UK surrogacy were easier.

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

Yes

Please provide your views below:

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

Yes

Please provide views below:

70 Consultation Question 62:

Please provide your views below:

My wife and I believe there should be a requirement that a surrogacy arrangement has been used because of medical necessity in both the cases stated above.

Please provide your views below:

71 Consultation Question 63:

Yes

Please provide your views below:

Please provide your views below:

My wife and I support both suggestions.

Yes

Please provide your views below:

72 Consultation Question 64:

Yes

Please provide your views below:

Please provide your views below:

My wife and I believe it is discriminatory to apply an age limit in any form, particularly as the pathway to parenthood can be extremely long, in our case 10 years.

Furthermore, we believe there is no justification for not equally applying the same approach to the new pathway and the parental order route in cases of domestic surrogacy.

Yes

Please provide your views below:

73 Consultation Question 65:

Yes

Please provide your views below:

Yes

Please provide your views below:

Note that many surrogacy agencies impose their own practical rules that potential surrogates must have previously successfully carried and delivered their own child before applying to become a surrogate, to demonstrate their fecundity to intended parents. This generally tends to push the lower age of potential surrogates upwards.

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Yes

Please provide your views below:

Please provide your views below:

75 Consultation Question 67:

Yes

Please provide your views below:

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Yes

Please provide your views below:

77 Consultation Question 69:

Yes

Please provide your views below:

Please provide your views below:

It appears sensible to harmonise adoption and surrogacy practices

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

We note from experience that many surrogacy agencies (international) impose their own practical rules that potential surrogates must have previously successfully carried and delivered their own child before applying to become a surrogate, to demonstrate their fecundity to intended parents. This generally tends to push the lower age of potential surrogates upward.

My wife and I believe that this is a practical consideration that will naturally be addressed by a) agencies and b) prospective parents, based on their risk appetite. The inexperience of a potential surrogate is of not of a critical nature to the regulation of surrogacy, and therefore this should not become a mandatory eligibility requirement.

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

Yes

Please provide your views below:

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

based on an allowance;

Please provide your views below:

81 Consultation Question 73:

Please provide your views below:

My wife and I believe that intended parents should be able to pay the surrogate essential costs relating to the pregnancy.

82 Consultation Question 74:

Please provide your views below:

My wife and I believe that intended parents should be able to pay the surrogate additional costs relating to the pregnancy.

83 Consultation Question 75:

Please provide your views below:

My wife and I believe that intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

My wife and I believe that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

85 Consultation Question 77:

Please provide your views below:

My wife and I believe that intended parents should be able to pay their surrogate for both of these categories of lost potential earnings.

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

pain and inconvenience arising from the pregnancy and childbirth; medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or, specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

Please provide your views below:

My wife and I believe that intended parents should be able to pay compensation to the surrogate for all of the above reasons . The surrogate is due all consideration for the potential risks and discomfort involved.

Please provide your views below:

left to the parties to negotiate.

Please provide your views below:

My wife and I believe that, in an ideal scenario, the intended parents should be free to pay to the surrogate whatever they feel happy with. During our surrogacy (international), we wanted to show our gratitude to our surrogate.

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

My wife and I see no reason why such payments should not be included in a surrogacy agreement/contract.

89 Consultation Question 81:

Please provide your views below:

My wife and I agree with both of these aspects.

90 Consultation Question 82:

It should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

Please provide your views below:

Not Answered

Please provide your views below:

My wife and I recognise that this question has two major aspects. We believe that the payment should be any sum any sum agreed between the parties to the surrogacy and captured in a surrogacy agreement, which may encourage more women to undertake surrogacy. However we recognise that market forces may generally push the cost higher, disadvantaging intended parents who do cannot afford the 'going' rate .

On balance, my wife and I believe that the benefit of an increase in availability of surrogates would outweigh the market-led increase in cost.

Please provide any views below:

91 Consultation Question 83:

Please provide views below:

My wife and I believe that a surrogacy agreement should be based upon the simple fact of carrying a child. If the surrogate has in good faith carried the child, then it is unreasonable to reduce the payment to the surrogate to reflect an event that is beyond her control, and which in fact may relate to a foetus that is not biologically related to her.

We do however believe that if the surrogacy agreement contains clauses related to non-consumption of alcohol, nicotine etc, and it is shown that the surrogate did not comply with these clauses, it would be reasonable to impose penalties in the even of such an unfortunate event.

to any miscarriage or termination; or

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Yes

Please provide your views below:

My wife and I agree that the proposal that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

95 Consultation Question 87:

Please provide your views below:

96 Consultation Question 88:

Yes

Please provide your views below:

My wife and I strongly agree that the proposal that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate. It is only right and fair that a surrogacy agreement should have legal contractual status and that the surrogate should have adequate legal protection.

No

Please provide your views below:

My wife and I believe that it is reasonable to impose certain requirements regarding lifestyle which could harm the unborn baby, such as smoking or consumption of alcohol, with which most parents comply these days. We do not see a reason why such terms should preclude enforceability of a surrogacy agreement.

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

My wife and I (both UK citizens) have twin children through gestational surrogacy [REDACTED]. The embryos were created in [REDACTED] from my gametes and eggs from a [REDACTED], then carried by a [REDACTED] surrogate.

We utilised the services of an agency in [REDACTED] to introduce us to a surrogate and to administer the surrogacy. This was our second surrogacy arrangement with the agency; we unfortunately had to abandon the first arrangement after multiple failures to implant.

Our overall experience of surrogacy in [REDACTED] was very positive; it should be noted that my wife and I are long-term expatriate professionals, so we are at ease with living and operating in countries outside the UK.

We developed a very good working relationship with the agency and also a warm relationship with the surrogates who helped us (two).

Delivery of the babies and immediate post-natal care of the babies and surrogate was handled well by a [REDACTED] hospital in [REDACTED]. We entered into a surrogacy agreement which was enforceable under [REDACTED] law, while observing the requirements of the UK process to ensure alignment. We took legal advice in both UK and [REDACTED] to achieve this. We also took a great deal of care to prepare ourselves for the UK passport and parental order processes and the [REDACTED] process. I would observe that it was a very intensive and time-consuming programme and probably not easy to do successfully unless both parents are able to devote their whole time to the processes at the same time as rearing new-borns. Of the various processes, the [REDACTED] process was the simplest. I took 4 months leave of absence from my job and we lived in [REDACTED] until we received passports for our sons. The necessity to keep the children in the birth country until passports arrived (almost 3 months) is an onerous and expensive obligation.

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

Our twins were born in [REDACTED]. We submitted our application for UK passports to the UK consulate in [REDACTED]. It would not have been possible to reduce the time to arrive at this date, due to the requirements to obtain documents from various sources. The passports were issued on [REDACTED] and we received them 1-2 days later. We departed [REDACTED]. From submission of applications to receipt of passports was slightly over 9 weeks. During that period, I had to attend a screening meeting in [REDACTED] followed by a telephone interview with the passport authority in UK. It appeared to me that a significant amount of effort by the consulate and passport authority went into verifying documentation and process required for the parental order process; there appeared to be significant overlap and duplication in this regard.

100 Consultation Question 92: We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?

Yes

Please provide your views below:

My wife and I wholeheartedly agree with this proposal, based upon our experience. As a registered UK citizen, we see no reason that this should not be possible. Furthermore, as soon as evidence of genetic affinity (paternity) is provided, the process should logically be able to continue at pace.

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

We have never experienced any issues relating to visas for our twins, nor have we ever been asked any questions relating to their birth during applications for visas or immigration in any country.

102 Consultation Question 94:

Yes

Please provide your views below:

This sounds like a totally logical proposal, and my wife and I see no reason why it should not be practical.

Not Answered

Please provide your views below:

Yes

Please provide your views below:

Yes

Please provide your views below:

Please provide your views below:

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

Yes

Please provide your views below:

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Yes

Please provide your views below:

My wife and I strongly agree with this proposal. We had to work very diligently to obtain a full understanding of the process, the requirements and paperwork.

Ideally this guidance should be carefully tailored to sit alongside guidance on surrogacy itself, since it is impossible to separate the two issues in international surrogacy.

106 Consultation Question 98: We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood. Do consultees agree?

Yes

Please provide your views below:

Ideally, my wife and I would like to say no' to this question. However we recognise that safeguards against immigration fraud, child trafficking and exploitation of international surrogates who may be vulnerable must be maintained.

107 Consultation Question 99:

Yes

Please provide your views below:

108 Consultation Question 100:

Please provide your views below:

Please provide your views below:

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

Not Answered

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

115 Consultation Question 107:

Please provide your views below:

Please provide your views below:

Please provide your views below:

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

■■■■■

international

If international, in which country did the arrangement take place?:

■■■■■

Yes

(a) opposite-sex couple;

118 Consultation Question 110:

international

Yes

Yes

Please provide the cost of any legal advice or representation below:

We paid a lump sum of GBP25,000 to cover preparation of documents required for a parental order, filings, general legal advice and representation by a barrister in the High Court.

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

My wife and I can must frame our response to this question in the context of our international surrogacy.

My wife, although a strong woman, found the entire concept of the parental order to be most upsetting and frustrating. Our twin boys were demonstrably genetically ours and the ■■■■■ authorities agreed by issuing birth certificates with the names of both my wife and I, yet were required to jump through hoops some 6 months later to be awarded our own child. We look around ourselves at parents who fall into pregnancy and sometime exhibit little care of their children, yet we, who had expended considerable time, effort and money in deliberate pursuit of a family, were required to apply for custody of our own children. The financial cost was substantial.

The requirement to wait for more than 9 weeks for a passport forced me to take 4 months leave of absence from work and almost cost me my job.

The financial burden of remaining in a foreign country for nearly 3 months was substantial.

Regarding emotional and social burden, my wife and I are personally aware of many couples who have suffered as a result of this process, coming on top of the heightened stress of achieving parenthood under difficult circumstances.

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

My wife and I had no particular issue with the necessity to prove a genetic link, recognising that it is a necessary safeguard against child trafficking.

Please provide your views below:

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

international

Please provide your views below:

Total cost including fertility treatment, legal advice, agency costs, payments to surrogate (including support and peripherals) and medical costs was approximately GBP 52,000.

This involved donor eggs and cryoshipment of embryos between countries.

Please provide your views below:

Personal funds from employment.

Please provide your views below:

In the course of ■ rounds of IVF and multiple attempts at implantations with another surrogate (across a period of ■ years), we estimate to have spent in excess of GBP 500,000. This figure includes legal and medical advice, investigations, treatment, medicines, travel, accommodation and other expenses incurred while executing the above.

Please provide your views below:

Personal funds from employment.

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

Short Form Questionnaire: Law Commissions' Surrogacy Consultation



Law

Commission

Reforming the law



Scottish Law Commission

promoting law reform

This form is an extract of the longer form for comments and responses to the Law Commission's and the Scottish Law Commission's consultation about reforming surrogacy law. If you would like to respond to the full version of our consultation questionnaire, please use the online form: <https://consult.justice.gov.uk/law-commission/surrogacy>. Please see our websites for further details, and for links to download the full consultation paper: <https://www.lawcom.gov.uk/project/surrogacy/> and <https://www.scotlawcom.gov.uk/law-reform/law-reform-projects/joint-projects/surrogacy/>.

We have selected 46 questions which may be of particular interest of **those with lived experience of surrogacy arrangements**: surrogates, intended parents, family members and adult children born of surrogacy arrangements. You do not need to answer all the questions if you do not want to, and you can write as much or as little as you would like in response to our questions.

Please note that we may publish or disclose information you provide us in response to this consultation, including personal information. We ask consultees, when providing their responses, if they could avoid including personal identifying information in the text of their response, particularly where this may reveal the identities of other people involved in their surrogacy arrangement.

For more information about how we consult and how we may use responses to the consultation, please see [page i – ii of the Consultation Paper](#).

HOW TO SUBMIT YOUR RESPONSE USING THIS QUESTIONNAIRE

Type your response into the text fields below and then save your completed form. When you have completed your response, email the completed form as an attachment to surrogacy@lawcommission.gov.uk.

The closing date for submitting a response to our consultation is 11 October 2019.

QUESTIONS ABOUT YOU

What is your name? [REDACTED]

If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation? n/a

Are you responding to this consultation in a personal capacity or on behalf of your organisation?
Personal

If responding to this consultation in a personal capacity, which term below best describes you?
Intended Parents

What is your email address?
[REDACTED]

What is your telephone number?
-

If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our [privacy notice](#), we take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Click or tap here to enter text.

Question No.	Consultation Question
Q1	Consultation Question 7. In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have: (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth, (2) complied with procedural safeguards for the agreement, and (3) met eligibility requirements, on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object. Do consultees agree?
Your Response to Q1	Yes
Q2	Consultation Question 11. We provisionally propose that:

	(1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child; (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and (3) the defined period should be the applicable period for birth registration less one week. Do consultees agree?
Your Response to Q2	no
Q3	Consultation Question 12. We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that: (1) the surrogate will be the legal parent of the child; (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood. Do consultees agree?
Your Response to Q3	Click or tap here to enter text.
Q4	Consultation Question 15. We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child. Do consultees agree? We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.
Your Response to Q4	Click or tap here to enter text.
Q5	Consultation Question 27.

	We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway: (1) the intended parents should acquire parental responsibility on the birth of the child; and (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order. Do consultees agree?
Your Response to Q5	Click or tap here to enter text.
Q6	Consultation Question 28. We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?
Your Response to Q6	Click or tap here to enter text.
Q7	Consultation Question 29. For all surrogacy arrangements, we invite consultees' views as to: (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.
Your Response to Q7	Click or tap here to enter text.
Q8	Consultation Question 55. We provisionally propose that: (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available; (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:

	(a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or (b) following a determination by the court that the child should live with the intended parents; and (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007. Do consultees agree?
Your Response to Q8	Click or tap here to enter text.
Q9	Consultation Question 30. We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?
Your Response to Q9	Click or tap here to enter text.
Q10	Consultation Question 32. We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway. We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.
Your Response to Q10	Click or tap here to enter text.
Q11	Consultation Question 67. We provisionally propose that, as a condition of being eligible for entry into the new pathway: (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15. Do consultees agree?

Your Response to Q11	Click or tap here to enter text.
Q12	Consultation Question 68. We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?
Your Response to Q12	Click or tap here to enter text.
Q13	Consultation Question 88. We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate. Do consultees agree? We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle. Do consultees agree?
Your Response to Q13	Click or tap here to enter text.
Q14	Consultation Question 42. We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?
Your Response to Q14	yes
Q15	Consultation Question 62. We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity: (1) for cases under the new pathway to parenthood; and/or (2) for cases where a post-birth parental order application is made. We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

Your Response to Q15	no
Q16	Consultation Question 70. We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.
Your Response to Q16	no
Q17	Consultation Question 33. We provisionally propose that: (1) there should be regulated surrogacy organisations; (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation. Do consultees agree?
Your Response to Q17	Click or tap here to enter text.
Q18	Consultation Question 35. We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?
Your Response to Q18	Click or tap here to enter text.
Q19	Consultation Question 37. We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree? We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.
Your Response to Q19	no
Q20	Consultation Question 59.

	We provisionally propose that the new pathway – (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility. Do consultees agree? We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements. We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements. Do consultees agree?
Your Response to Q20	Click or tap here to enter text.
Q21	Consultation Question 46. We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?
Your Response to Q21	Click or tap here to enter text.
Q22	Consultation Question 47. We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors. Do consultees agree? We provisionally propose that: (1) the register should be maintained by the Authority; (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include: (a) identifying information about all the parties to the surrogacy arrangement, and

	(b) non-identifying information about those who have contributed gametes to the conception of the child; and (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies. Do consultees agree?
Your Response to Q22	no
Q23	Consultation Question 48. We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.
Your Response to Q23	Click or tap here to enter text.
Q24	Consultation Question 49. We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request. Do consultees agree? We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances: (1) where his or her legal parents have consented; (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or (3) in any other circumstances.
Your Response to Q24	Click or tap here to enter text.
Q25	Consultation Question 51. We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so. Do consultees agree?

	We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.
Your Response to Q25	Click or tap here to enter text.
Q26	Consultation Question 52. We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so: (1) if they are genetically related through the surrogate; and/or (2) if they are not genetically related through the surrogate.
Your Response to Q26	Click or tap here to enter text.
Q27	Consultation Question 53. For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.
Your Response to Q27	Click or tap here to enter text.
Q28	Consultation Question 72. We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be: (1) based on an allowance; (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or (3) based on costs actually incurred by the surrogate, and only on production of receipts.
Your Response to Q28	2
Q29	Consultation Question 73. We invite consultees' views as to: (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and

	(2) the types of expenditure which should be considered “essential”.
Your Response to Q29	yes
Q30	Consultation Question 74. We invite consultees’ views as to: (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and (2) the types of expenditure which should be considered additional, rather than essential.
Your Response to Q30	yes
Q31	Consultation Question 75. We invite consultees’ views as to: (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and (2) the types of cost which should be included within this category.
Your Response to Q31	yes
Q32	Consultation Question 76. We invite consultees’ views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).
Your Response to Q32	yes
Q33	Consultation Question 77. We invite consultees’ views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings: (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or (2) other lost potential earnings (as defined in paragraph 15.36 above).
Your Response to Q33	Click or tap here to enter text.

Q34	Consultation Question 78. We invite consultees to share their experiences: (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.
Your Response to Q34	Click or tap here to enter text.
Q35	Consultation Question 79. We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following: (1) pain and inconvenience arising from the pregnancy and childbirth; (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy. We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation. We invite consultees' views as to whether the level of compensation payable should be: (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or (2) left to the parties to negotiate.
Your Response to Q35	Yes, 2 left to parties to negotiate
Q36	Consultation Question 80. We invite consultees views' as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.
Your Response to Q36	yes
Q37	Consultation Question 81.

	We invite consultees' views as to whether: (1) intended parents should be able to buy gifts for the surrogate; and (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.
Your Response to Q37	yes
Q38	Consultation Question 82. We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be: (1) any sum agreed between the parties to the surrogacy; or (2) a fixed fee set by the regulator. We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee: (1) no other payments; (2) essential costs relating to the pregnancy; (3) additional costs relating to the pregnancy; (4) lost earnings; (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or (6) gifts.
Your Response to Q38	Click or tap here to enter text.
Q39	Consultation Question 84. We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?
Your Response to Q39	Click or tap here to enter text.

Q40	Consultation Question 85. We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.
Your Response to Q40	Click or tap here to enter text.
Q41	Consultation Question 92. We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?
Your Response to Q41	yes
Q42	Consultation Question 94. We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth. Do consultees agree? We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules. Do consultees agree? We provisionally propose that: (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate. Do consultees agree? We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.
Your Response to Q42	yes

Q43	Consultation Question 95. We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?
Your Response to Q43	Click or tap here to enter text.
Q44	Consultation Question 97. We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?
Your Response to Q44	yes
Q45	Consultation Question 99. We provisionally propose that: the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law. Do consultees agree?
Your Response to Q45	yes
Q46	Consultation Question 107. We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area. We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

	We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.
Your Response to Q46	Click or tap here to enter text.

END OF QUESTIONNAIRE – HOW TO SUBMIT

Thank you for completing this form. To submit it as a formal response to the Law Commission, save your completed form and email it as an attachment to surrogacy@lawcommission.gov.uk. Please note that the deadline for responding to our consultation is **11 October 2019**. surrogacy@lawcommission.gov.uk

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 09:41:00

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Other individual

5 What is your email address?

Email address:

6 What is your telephone number?

Telephone number:

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

All International surrogacy arrangements should continue to be automatically allocated to a Judge of the High Court. There is a history of International surrogacy abuse and exploitation and a high level of scrutiny should be maintained.

There are examples of women being coerced into selling their baby or acting as a surrogate for financial gain. There is ample evidence of surrogacy, in a context of extremely financially unequal contexts, being highly exploitative and where the financial necessity experienced by the woman ("surrogate") or profit potential for some, totally undermines or overrides any concept of informed consent.

Acknowledging the potential for abuse in surrogacy isn't just a problem in an overseas context, the more that surrogacy is normalised and legitimised the greater potential for abuse. Having your own 'biological' family is not a human right for the adults. It is a right to born children to have a family to feel safe and loved, so adoption needs to be prioritised over surrogacy as much as possible.

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

The consultation paper mentions that the UK has ratified the UN Convention on the Rights of the Child (UNCRC) and its Optional Protocol on the sale of

children, child prostitution and child pornography (the Optional Protocol). However, the consultation paper does not explain that ratifying an international treaty like CEDAW and UNCRC places a legally binding obligation to abide by its terms. In fact the paper suggests the opposite. There is no 'right to procreate'.

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

No

Please provide your views below:

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Yes

Please provide your views below:

Prospective parents should be DBS checked.

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

No

Please provide your views below:

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. Notice the capital letters. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all. In fact there is no organisation listed as children safeguarding experts or women rights representatives among the consultants for the changes proposed.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

15 Consultation Question 8:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

Bringing children to the world, should NEVER become a business.

Not Answered

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

NO MENTION at all, in the consultation of Egg donation. It is dangerous, with about 10% getting complications, 1-2% life threatening. The Eggsploration film by Jennifer Lahl is shocking, birthing should not become a commercial operation USA style.

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway.'

18 Consultation Question 11:

No

Please provide your views below:

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline. Birthing should NEVER become a commercial enterprise.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

19 Consultation Question 12:

Not Answered

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

20 Consultation Question 13:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

21 Consultation Question 14:

No

Please provide your views below:

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

22 Consultation Question 15:

No

Please provide your views below:

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

Yes

Please share your views below:

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

23 Consultation Question 16:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

The mother should be the legal parent for the fourth trimester to ensure that the children right to the best start in life is facilitated/encouraged.

No

Please provide your views below:

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

No

Please provide your views below:

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

26 Consultation Question 19:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

Please provide your views below:

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

27 Consultation Question 20:

Yes

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

29 Consultation Question 22:

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

30 Consultation Question 23:

Please provide your views below:

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

31 Consultation Question 24:

Please provide your views below:

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

33 Consultation Question 26:

No

Please provide your views below:

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

34 Consultation Question 27:

No

Please provide your views below:

parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised

regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Other

Please provide your views below:

I agree that the birth mother should have parental responsibility for the child but NOT that the 'intended parents' should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women's reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

36 Consultation Question 29:

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Chapter 9: The Regulation of Surrogacy Arrangements

37 Consultation Question 30: We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

38 Consultation Question 31: We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

Please provide your views below:

39 Consultation Question 32:

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

40 Consultation Question 33:

No

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children. It will damage women, children and family relations and will make a commercial business out of a biological event.

Other

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Regulated surrogacy will only legitimise what should not be a business profiting from a biological event and creating 'farming' children.

Other

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Children are not for profit. Adoption should be prioritised over surrogacy always.

41 Consultation Question 34:

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Please provide your views below:

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

42 Consultation Question 35: We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?

Other

Please provide your views below:

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy as a business. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.' Adoption should always be prioritised over surrogacy, which could take the form of child trafficking.

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Women, poor women at that will be most affected by this business model, as wealthy families will pay for the creation and handing over of human beings.

43 Consultation Question 36: We invite consultees' views as to what should be included in the definition of matching and facilitation services.

Please provide your views below:

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

44 Consultation Question 37: We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway. Do consultees agree?

Other

Please provide your views below:

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

45 Consultation Question 37: We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

Please provide your views below:

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

46 Consultation Question 38: We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

Please provide your views below:

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Poor women will be tempted by this business and will negatively impact women and children.

47 Consultation Question 39: We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood. Do consultees agree?

Other

Please provide your views below:

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

Please provide your views below:

Surrogacy can be considered a violation of the human rights of both women and children, regulation would drive an increase in surrogacy and it will sanction the practice in detriment of adoption.

48 Consultation Question 40: We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms). Do consultees agree?

Yes

Please provide your views below:

49 Consultation Question 41: We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

50 Consultation Question 42: We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements. Do consultees agree?

No

Please provide your views below:

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent. Exploitation of vulnerable women will follow.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the

temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Advertisements tend to present a rosy picture of the product they sell and ignore the negative effects, flaws, risks or dangers associated with it, so such publicity of which I consider an INHUMAN practice of creating children to be separated from their birthing mother (the only environment they are familiar with) from the moment of birth seems barbaric.

Chapter 10: Children's Access to Information About Surrogacy Arrangements

51 Consultation Question 43: We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18. Do consultees agree?

Yes

Please provide your views below:

52 Consultation Question 44: We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

53 Consultation Question 45: We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

Please provide your views below:

I do not consider the birth registration system to be in need of reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

The birth certificate is about the child born. It should reflect biological facts.

54 Consultation Question 46: We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings. Do consultees agree?

Yes

Please provide your views below:

55 Consultation Question 47:

Yes

Please provide your views below:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

56 Consultation Question 48: We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

Please provide your views below:

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

57 Consultation Question 49:

Yes

Please provide your views below:

It appears that not many surrogated children have been consulted. Some will have an adverse reaction to learn of the way their came to be and might need psychological support to cope.

Please provide your views below:

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

58 Consultation Question 50: We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

Please provide your views below:

YES, this should be possible.

59 Consultation Question 51:

Yes

Please provide your views below:

Agree

Please provide your views below:

Agree

60 Consultation Question 52:

Please provide your views below:

Yes

Please provide your views below:

Yes

61 Consultation Question 53: For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

Please provide your views below:

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Chapter 11: Eligibility Criteria for a Parental Order

62 Consultation Question 54: We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished. Do consultees agree?

Please provide your views below:

No . The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

63 Consultation Question 55:

No

Please provide your views below:

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

No

Please provide your views below:

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Chapter 12: Eligibility Criteria for Both a Parental Order and for the New Pathway

64 Consultation Question 56:

No

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism. This is a BIG worry.

Please provide your views below:

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

65 Consultation Question 57:

Please provide your views below:

The qualifying categories of relationship should not be reformed or removed.

66 Consultation Question 58: We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them. Do consultees agree?

Other

Please provide views below:

I profoundly disagree with the proposals for the 'new pathway'.

67 Consultation Question 59:

No

Please provide views below:

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Please provide views below:

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

Yes

Please provide views below:

68 Consultation Question 60: We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order. Do consultees agree?

No

Please provide your views below:

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity. Being a parent it is not a human right. By genetically selecting reproduction of people that wouldn't do so without intervention we are creating an 'artificial' selection bias which will discriminate against those lacking the means to finance such practice.

Adoption should always be preferred as means to create families.

69 Consultation Question 61: We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order. Do consultees agree?

No

Please provide views below:

I dispute that surrogacy is ever a 'medical necessity.'

70 Consultation Question 62:

Please provide your views below:

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

Please provide your views below:

I dispute that surrogacy is ever a 'medical necessity.'

71 Consultation Question 63:

Other

Please provide your views below:

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

Please provide your views below:

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

Yes

Please provide your views below:

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

72 Consultation Question 64:

No

Please provide your views below:

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

There is evidence that human brain development into adulthood continues until the age of 25 and this should be the minimum age for an IP.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

73 Consultation Question 65:

Other

Please provide your views below:

Minimum age of 18 for a surrogate (and also 64 minimum age 18 for commissioning parent of surrogate baby. Who would be funding this I ask?) Do you have a teenage daughter? Ask her what she thinks about becoming a surrogate mother at 18. My daughter thinks young women that age should be planning careers and going to university. And also that they are still young enough to deserve protection from adults who may seek to exploit or coerce them.

No

Please provide your views below:

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Having a child via artificial means involving surrogacy might be a capricious enterprise in an adolescent mind. This situation should be avoided at all cost.

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

Please provide your views below:

75 Consultation Question 67:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

76 Consultation Question 68: We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

77 Consultation Question 69:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

78 Consultation Question 70: We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

Please provide your views below:

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Having experienced pregnancy might give a woman an idea of what it is she is letting herself in for. Furthermore, if the woman already has a family and the risk that a pregnancy poses for her and her own family should also be considered.

79 Consultation Question 71: We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway. Do consultees agree?

Other

Please provide your views below:

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Pregnancy is a risky event and the higher number of pregnancies any given woman undertakes, the more risk she runs.

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

Not Answered

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Despite the above, it pains me to see that surrogacy as a business will exploit women's bodies, families and lives. The industry set up around surrogacy, from clinical, legal and matching services will profit away from human beings' desperation (both IP and surrogate mothers) and the product of this bonfire of greed (genetical survival and money) will pick up the pieces when he or she becomes an adult. It is a very sorrowful state of affairs that allows for the trafficking of children to happen.

81 Consultation Question 73:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

It pains me to see women will be exploited and children sold.

82 Consultation Question 74:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Different children will have different prices and when they find out in adult life, it might have adverse effects.

83 Consultation Question 75:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

It pains me to see women exploited and children sold. However, a life insurance should be in place for the woman if she has children of her own in case pregnancy is fatal.

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

85 Consultation Question 77:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

Please provide your views below:

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Not Answered

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

89 Consultation Question 81:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

90 Consultation Question 82:

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

Not Answered

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

Please provide any views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

91 Consultation Question 83:

Please provide views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Not Answered

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Other

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

95 Consultation Question 87:

Please provide your views below:

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

96 Consultation Question 88:

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Chapter 16: International Surrogacy Arrangements

97 Consultation Question 89: We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

Please provide your views below:

What about asking surrogated children too?

98 Consultation Question 90: We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

Please provide your views below:

99 Consultation Question 91: We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

Please provide your views below:

100 Consultation Question 92: We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child. Do consultees agree?

No

Please provide your views below:

This is encouraging surrogacy as IPs will know that they can engage in 'booking' a surrogate and bring the baby (trafficking) to the UK, where the child will be given a passport. This is like allowing people to buy children abroad and have a guarantee they will be accepted back in UK.

101 Consultation Question 93: We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

102 Consultation Question 94:

No

Please provide your views below:

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

No

Please provide your views below:

Yes

Please provide your views below:

It shouldn't depend on child breaking links.

Yes

Please provide your views below:

The child should be allowed contact

Please provide your views below:

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

103 Consultation Question 95: We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child. Do consultees agree?

No

Please provide your views below:

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

104 Consultation Question 96: We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

Please provide your views below:

105 Consultation Question 97: We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement. Do consultees agree?

Other

Please provide your views below:

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Adoption should be the preferred form to create a family.

Also, penalties for children trafficking and human exploitation should be included, so IP with other aims in mind other than caring for a child (for example, paedophilia, organ donation, a career for old age, etc..) should be mentioned.

106 Consultation Question 98: We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood. Do consultees agree?

Other

Please provide your views below:

I profoundly disagree with the proposals for the 'new pathway'.

International surrogacy and surrogacy should not be promoted and adoption should be preferred as a form to create a family.

107 Consultation Question 99:

No

Please provide your views below:

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

108 Consultation Question 100:

Please provide your views below:

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Please provide your views below:

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Chapter 17: Miscellaneous Issues

109 Consultation Question 101: We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

Please provide your views below:

I do not believe this needs changing.

110 Consultation Question 102: We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies. Do consultees agree?

No

Please provide your views below:

111 Consultation Question 103:

Please provide your views below:

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

112 Consultation Question 104: We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

Please provide your views below:

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

113 Consultation Question 105: We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

Please provide your views below:

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

114 Consultation Question 106: We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

Please provide your views below:

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

115 Consultation Question 107:

Please provide your views below:

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

However, private health arrangements might also be a method to control surrogate mothers and coerce them into satisfying the IP remit.

Adoption should always be the preferred means of forming a family if assistance is needed. This should always be added to the information about surrogacy, with examples of IP that have changed their mind and decide to go that path satisfactorily.

Please provide your views below:

As mentioned in the previous box and through the survey.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes. This might be difficult if the surrogate is a migrant and doesn't speak English, so special provision for translators to be present or native 'responsible adults' that might be able to pick up the truth of the situation.

Adoption as a preferred option. The need to check IP properly as for adoption. The need for the surrogate to be over 25 and preferably another already. The danger of coercion and the penalties for human exploitation and child trafficking. The rights of the surrogate to withdraw. The rights of the child to contact surrogate. etc

Please provide your views below:

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

116 Consultation Question 108: We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

Please provide your views below:

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women. It is human exploitation and puts women at risk.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Also what happens if the child is rejected by the IPs because of birth defects, or other disabilities that become visible later in childhood or adulthood? How will this situation be treated.

What if the surrogate dies during birth or becomes disable for life, how this will affect her own family and what is the responsibility of IP towards the surrogate in that situation.

How to negotiate the relationship of surrogate/donors and offspring in later life?

Chapter 18: Impact

117 Consultation Question 109:

Please insert the year of birth here:

Not Answered

If international, in which country did the arrangement take place?:

Not Answered

Not Answered

118 Consultation Question 110:

Not Answered

Not Answered

Not Answered

Please provide the cost of any legal advice or representation below:

119 Consultation Question 111: We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Please provide your views below:

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

Adoption should always be presented as preferred method to form a family for those who will not be able to reproduce.

Please provide your views below:

I cannot accept there is a medical necessity for surrogacy. Becoming a parent is not a human right. Reproduction is not a right.

By linking reproduction to financial wealth we are walking into an unethical path where vulnerable women in need of income can be coerced to sell babies to IP that can afford them.

That is human exploitation and child trafficking.

122 Consultation Question 114:

Please provide your views below:

Business should not be brought into reproduction as said before because it will set an industry around exploitation of women and child trafficking.

123 Consultation Question 115:

Please provide your views below:

Please provide your views below:

124 Consultation Question 116:

Not Answered

Please provide your views below:

I'm not IP at present. There is a possibility that I would need to be an IP in the future and I would have to remind myself at that time that Money, payment or any other form of financial transaction should not be brought into reproduction because it will set an industry around exploitation of women and child trafficking.

Please provide your views below:

I'm not IP at present. There is a possibility that I would need to be an IP in the future and I would have to remind myself at that time that Money, payment or any other form of financial transaction should not be brought into reproduction because it will set an industry around exploitation of women and child trafficking.

Please don't tell me people will be crowdfunding this?

Please provide your views below:

Spent in fertility treatment shouldn't need to be relevant to surrogacy.

Money should not be involved to avoid human exploitation and child trafficking.

Please provide your views below:

as previous

125 Consultation Question 117: We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Please provide your views below:

126 Consultation Question 118: We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this Consultation Paper.

Please provide your views below:

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy –

‘intended parents,’ women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the ‘intended parents’ the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn’t appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women’s position relative to men’s, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their ‘parents’ not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners’ ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that ‘procreative liberty’ confers some kind of human right to surrogacy and the idea that a woman has a human right to be a ‘surrogate.’ These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the ‘new pathway’ violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother’s choice to transfer the child “must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation.”
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government’s consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women’s and children’s human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

[REDACTED]

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

N/A

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response

If other, please provide details:

4. If responding to this consultation in a personal capacity, which term below best describes you?

(Choose one response)

- Other individual

5. What is your email address?

Email address:

[REDACTED]

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

[REDACTED]

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

1.1 We invite consultees' views as to whether, in England and Wales:

- (1) all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

- (2) if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

1.2 We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these

cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

- 1.3 We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

- 1.4 We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

- 1.5 We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

- 1.6 We invite consultees' views as to whether they are of the view that, in Scotland:

- (1) there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
- (2) it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
- (3) further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

- 1.7 In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

- (1) entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
- (2) complied with procedural safeguards for the agreement, and
- (3) met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I strongly disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

1.8 We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

- 1.9 We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Paragraph 8.14

Consultation Question 9.

- 1.10 We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

- 1.11 We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

- 1.12 We provisionally propose that:

- (1) the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;
- (2) this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and
- (3) the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

1.13 We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

- (1) the surrogate will be the legal parent of the child;
- (2) if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
- (3) the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and

parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

1.14 We provisionally propose that, in the new pathway:

- (1) the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;
- (2) if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and
- (3) if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth

and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

- (1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;
- (2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and
- (3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.16 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

1.17 We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

1.18 We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

- (1) the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and
- (2) the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

1.19 We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Consultation Question 17.

1.20 We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

1.21 For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

1.22 We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

1.23 We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

- (1) it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:
 - (a) for an order for appointment as guardian of the child, and
 - (b) for a parental order in the name of the intended parents, subject to the surrogate's consent; or
- (2) the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

1.24 We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

- (1) the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;
- (2) if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and
- (3) if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Paragraph 8.86

Consultation Question 21.

1.25 We invite consultees' views as to:

- (1) a temporary three-parent model of legal parenthood in surrogacy cases; and
- (2) how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

1.26 We invite consultees' views:

- (1) as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
- (2) if so, as to whether should this oversight be:

- (a) administrative, or
- (b) judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

1.27 In respect of England and Wales, we invite consultees' views as to:

- (1) whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and
- (2) if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

1.28 In respect of England and Wales, we invite consultees' views:

- (1) as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and
- (2) what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

1.29 We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

1.30 We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- (1) the child is living with them or being cared for by them; and
- (2) they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as

recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

1.31 We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

- (1) the intended parents should acquire parental responsibility on the birth of the child; and
- (2) if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of

the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to ‘object’. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

1.32 We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the ‘intended parents’ should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child’s best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women’s reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

1.33 For all surrogacy arrangements, we invite consultees’ views as to:

- (1) whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

- (2) whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

- 1.34 We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

- 1.35 We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

1.36 We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

1.37 We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

1.38 We provisionally propose that:

- (1) there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (2) there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

- (3) each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

1.39 We provisionally propose that the person responsible must be responsible for:

- (1) representing the organisation to, and liaising with, the regulator;
- (2) managing the regulated surrogacy organisation with sufficient care, competence and skill;
- (3) ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- (4) training any staff, including that of the person responsible; and
- (5) providing data to the regulator and to such other person as required by law.

Do consultees agree?

I agree to none of the above

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.40 We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

1.41 We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

1.42 We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

1.43 We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

1.44 We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and

facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

1.45 We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

1.46 We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

1.47 We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

1.48 If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

1.49 We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

1.50 We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

1.51 We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

1.52 We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

1.53 We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the

recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

1.54 We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

1.55 We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

1.56 We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

1.57 We provisionally propose that:

- (1) the register should be maintained by the Authority;
- (2) the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:
 - (a) identifying information about all the parties to the surrogacy arrangement, and
 - (b) non-identifying information about those who have contributed gametes to the conception of the child; and
- (3) to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

1.58 We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

- 1.59 We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

- 1.60 We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

- (1) where his or her legal parents have consented;
- (2) if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or
- (3) in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

- 1.61 We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

- 1.62 We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

1.63 We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

1.64 We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

- (1) if they are genetically related through the surrogate; and/or
- (2) if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

1.65 For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

1.66 We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

1.67 We provisionally propose that:

- (1) the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

- (2) the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:
 - (a) where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
 - (b) following a determination by the court that the child should live with the intended parents; and
- (3) the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

1.68 We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

1.69 We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

1.70 We invite consultees' views on whether:

- (1) the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or
- (2) the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

1.71 We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

1.72 We provisionally propose that the new pathway –

- (1) should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but
- (2) that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

1.73 We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

1.74 We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Consultation Question 60.

1.75 We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

1.76 We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

1.77 We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

- (1) for cases under the new pathway to parenthood; and/or
- (2) for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

1.78 We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

1.79 We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

1.80 We invite consultees' views as to whether it should be a condition for an application for a parental order that:

- (1) those who contributed gametes are entered on the national register of surrogacy agreements; and/or
- (2) if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

1.81 We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

1.82 We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

1.83 We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood.

I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

1.84 We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

1.85 We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There

should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

1.86 We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

1.87 We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.88 We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

1.89 We provisionally propose that, as a condition of being eligible for entry into the new pathway:

- (1) the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
- (2) the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

1.90 We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

1.91 We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.92 We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

1.93 We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

1.94 We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

1.95 We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- (1) based on an allowance;
- (2) based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- (3) based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

1.96 We invite consultees' views as to:

- (1) whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

1.97 We invite consultees' views as to:

- (1) whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and
- (2) the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

1.98 We invite consultees' views as to:

- (1) whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and
- (2) the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Consultation Question 76.

1.99 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

1.100 We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

- (1) her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or
- (2) other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

1.101 We invite consultees to share their experiences:

- (1) of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and
- (2) where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

1.102 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

- (1) pain and inconvenience arising from the pregnancy and childbirth;
- (2) medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
- (3) specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

1.103 We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

1.104 We invite consultees' views as to whether the level of compensation payable should be:

- (1) a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- (2) left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

1.105 We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

1.106 We invite consultees' views as to whether:

- (1) intended parents should be able to buy gifts for the surrogate; and
- (2) if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

1.107 We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.108 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- (1) any sum agreed between the parties to the surrogacy; or
- (2) a fixed fee set by the regulator.

Neither

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

1.109 We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- (1) no other payments;
- (2) essential costs relating to the pregnancy;
- (3) additional costs relating to the pregnancy;
- (4) lost earnings;
- (5) compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- (6) gifts.

None of the above

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

1.110 We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

1.111 We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- (1) in the first trimester of pregnancy only;
- (2) to any miscarriage or termination; or
- (3) some other period of time (please specify).

None of the above

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

1.112 We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

1.113 We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

1.114 We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

1.115 We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

- (1) for cases within the new pathway to parenthood; and
- (2) for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

1.116 We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

1.117 We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

1.118 We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

1.119 We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

1.120 We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

1.121 We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the ‘intended parents’ to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur’s recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

1.122 We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

1.123 We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child’s country of birth.

Do consultees agree?

NO

Allowing the ‘intended parents’ to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur’s recommendations* that are designed to protect against the selling

and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

1.124 We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

1.125 We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

1.126 We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

1.127 We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

1.128 We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

1.129 We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

1.130 We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

1.131 We provisionally propose that:

1.132 the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

1.133 before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

1.134 We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

1.135 We invite consultees' views as to whether:

- (1) any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and
- (2) if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

1.136 We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

1.137 We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

1.138 We invite consultees' views as to:

- (1) whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and
- (2) if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

1.139 We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

1.140 We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

1.141 We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

1.142 We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself.

There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other counties.

1.143 We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

1.144 We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

1.145 We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy

arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

1.146 We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

- (1) when the child was born;
- (2) whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
- (3) whether the arrangement led to the making of a parental order in the UK; and
- (4) whether they are a:
 - (a) opposite-sex couple;
 - (b) male same-sex couple;
 - (c) female same-sex couple;
 - (d) single woman; or
 - (e) single man.

N/A

Paragraph 18.2

Consultation Question 110.

1.147 We invite consultees who have experience of applying for a parental order in the UK to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) whether they had legal advice before the making of the parental order;
- (3) whether they were represented by a lawyer in court; and
- (4) the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

1.148 We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

1.149 We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

- (1) medical screening; and
- (2) implications counselling

(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

1.150 We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

- (1) to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and

- (2) to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

1.151 We invite consultees to tell us of the impact of:

- (1) the current requirement of a genetic link; and
- (2) any removal of this requirement in cases of medical necessity:
 - (a) in the new pathway;
 - (b) in the parental order route for domestic surrogacy arrangements; or
 - (c) in both situations.

Paragraph 18.11

Consultation Question 114.

1.152 We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

- (1) their profession; and
- (2) what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

1.153 We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and

- (2) if particular proposals will restrict accessibility, and why.

N/A

1.154 We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

- (1) if particular proposals will increase accessibility, and why; and
- (2) if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

1.155 We ask consultees who are intended parents to tell us:

- (1) whether the surrogacy arrangement was domestic or international;
- (2) what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- (3) how they raised the funds for the surrogacy arrangement(s);
- (4) what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- (5) how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

1.156 We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

1.157 We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Response ID ANON-2V7F-Y8UE-G

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 10:00:51

About you

1 What is your name?

Name:

[REDACTED]

2 If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

Enter the name of your organisation:

Surrogacy UK

3 Are you responding to this consultation in a personal capacity or on behalf of your organisation?

This is a personal response

If other, please provide details:

4 If responding to this consultation in a personal capacity, which term below best describes you?

Intended parent

5 What is your email address?

Email address:

[REDACTED]

6 What is your telephone number?

Telephone number:

[REDACTED]

7 If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Please explain why you wish the information that you will provide to us to be treated as confidential:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

Please provide your views below:

yes

9 Consultation Question 2:

Please provide your views below:

It should be set at an appropriate level that has additional capacity.

Perhaps where there are complex cases, there should be handled the usual way.

Where they are not, then they should be handled in the simplest and quickest way possible - whatever way this is.

10 Consultation Question 3: We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Please provide your views below:

11 Consultation Question 4:

Not Answered

Please provide your views below:

12 Consultation Question 5: We provisionally propose that the rule currently contained in rule 16.35(5) of the Family Procedure Rules 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise. Do consultees agree?

Not Answered

Please provide your views below:

13 Consultation Question 6:

Please provide your views below:

Chapter 8: Legal Parenthood: Proposals for Reform - A New Pathway

14 Consultation Question 7:

Other

Please provide your views below:

I agree - but disagree with the right to objection in the scenario above.

I recognise that for things like safeguarding etc there should be a right to object, but if the requirements are met about, safeguarding issues etc will not arise.

Plus I feel there should be a difference as to whether the surrogate is the child's genetic parents. If the child is genetically linked, then the above is acceptable. If not, I would again disagree. It could mean that a surrogate can stop the genetic parents from becoming parents when she has no genetic links.

15 Consultation Question 8:

Yes

Please provide your views below:

100 years; or

Please provide your views below:

16 Consultation Question 9: We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved. Do consultees agree?

Yes

Please provide your views below:

17 Consultation Question 10: We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

Please provide your views below:

18 Consultation Question 11:

No

Please provide your views below:

Only if the child is the surrogate's genetic parents. If the child is genetically linked, then the above is acceptable. If not, I would disagree. It could mean that a surrogate can stop the genetic parents from becoming parents when she has no genetic links.

19 Consultation Question 12:

Yes

Please provide your views below:

20 Consultation Question 13:

Yes

Please provide your views below:

21 Consultation Question 14:

Yes

Please provide your views below:

22 Consultation Question 15:

Yes

Please provide your views below:

Yes

Please share your views below:

23 Consultation Question 16:

Yes

Please provide your views below:

Yes

Please provide your views below:

24 Consultation Question 17: We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth. Do consultees agree?

Yes

Please provide your views below:

25 Consultation Question 18: For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

Please provide your views below:

26 Consultation Question 19:

Not Answered

Please provide your views below:

Please provide your views below:

27 Consultation Question 20:

Not Answered

Please provide your views below:

28 Consultation Question 21: We invite consultees' views as to: (1) a temporary three-parent model of legal parenthood in surrogacy cases; and (2) how the legal parenthood of the surrogate should be extinguished in this model.

Please provide your views below:

29 Consultation Question 22:

Please provide your views below:

30 Consultation Question 23:

Please provide your views below:

31 Consultation Question 24:

Please provide your views below:

32 Consultation Question 25: We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

Please provide your views below:

33 Consultation Question 26:

Not Answered

Please provide your views below:

34 Consultation Question 27:

Not Answered

Please provide your views below:

35 Consultation Question 28: We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object. Do consultees agree?

Not Answered

Please provide your views below:

36 Consultation Question 29:

Please provide your views below:

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

based on costs actually incurred by the surrogate, but without the need for production of receipts; or

Please provide your views below:

81 Consultation Question 73:

Please provide your views below:

yes

82 Consultation Question 74:

Please provide your views below:

yes

83 Consultation Question 75:

Please provide your views below:

yes

84 Consultation Question 76: We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

Please provide your views below:

yes

85 Consultation Question 77:

Please provide your views below:

yes

86 Consultation Question 78:

Please provide your views below:

Should not affect as they are expenses - they are not earnings.

87 Consultation Question 79:

Please provide your views below:

yes

Please provide your views below:

Not Answered

Please provide your views below:

88 Consultation Question 80: We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the surrogate's death, including through payment of the cost of life assurance for the surrogate.

Please provide your views below:

89 Consultation Question 81:

Please provide your views below:

90 Consultation Question 82:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Please provide any views below:

91 Consultation Question 83:

Please provide views below:

Not Answered

Please provide your views below:

92 Consultation Question 84: We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order. Do consultees agree?

Not Answered

Please provide your views below:

93 Consultation Question 85: We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

94 Consultation Question 86: We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

Please provide your views below:

95 Consultation Question 87:

Please provide your views below:

96 Consultation Question 88:

Not Answered

Please provide your views below:

Not Answered

Please provide your views below:

Surrogacy Consultation Questions

Email the completed document to **surrogacy@lawcommission.gov.uk** before the deadline of 11 October 2019.

ABOUT YOU

1. What is your name?

Name (Required)

██████████

2. If you are a member of an organisation (for example, a surrogacy organisation or a university), what is the name of your organisation?

[Name of organisation if relevant.]

3. Are you responding to this consultation in a personal capacity or on behalf of your organisation?

(Required – Choose one response)

- This is a personal response

4. If responding to this consultation in a personal capacity, which term below best describes you?

- other

5. What is your email address?

Email address:

████████████████████

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

6. What is your telephone number?

Telephone number:

██████████

7. If you want the information that you provide in response to this consultation to be treated as confidential, please explain to us why you regard the information as confidential. As explained in our privacy notice, we will take full account of your explanation but cannot give an assurance that confidentiality can be maintained in all circumstances.

Consultation Question 1.

We invite consultees' views as to whether, in England and Wales:

1. all international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court; and

YES

International surrogacy arrangements pose opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should continue to be heard by a judge of the High Court.

2. if international surrogacy arrangements are not automatically allocated to a judge of the High Court, circuit judges should be ticketed to hear such cases.

Paragraph 6.42

Consultation Question 2.

We invite consultees' views as to whether, in respect of England and Wales

- (1) domestic surrogacy cases which continue to require a post-birth parental order should continue to be heard by lay justices, or whether they should be allocated to another level of the judiciary; and
- (2) If consultees consider that such cases should be allocated to another level of the judiciary, which level of the judiciary would be appropriate.

All surrogacy arrangements pose opportunities for the sale and trafficking of children and the exploitation of birth mothers. These are human rights issues of the utmost seriousness and so the arrangements should be overseen by a senior and experienced judge. For this reason these cases should NOT be heard by a lay judge but rather by a senior judge, e.g. ticketed to circuit judges or higher.

Paragraph 6.51

Consultation Question 3.

We invite consultees to provide any evidence that would support either the retention of the current allocation rules, or their reform along the lines that we discuss in Consultation Questions 1 and 2.

Paragraph 6.53

Consultation Question 4.

We provisionally propose that, in England and Wales, the court should be placed under a duty to consider whether to make an order awarding the intended parents parental responsibility at the first directions hearing in the proceedings.

Do consultees agree?

(Note that this provisional proposal would be necessary only if our provisional proposal in Chapter 8 that all intended parents (whether in the new pathway or not) automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees).

NO

The UN Special Rapporteur recommends* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. Nothing about the transfer of parental responsibility should be automatic and all options should be open.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 6.58

Consultation Question 5.

We provisionally propose that the rule currently contained in rule 16.35(5) of the FPR 2010 should be reversed, so that a parental order report is released to the parties in the proceedings by default, unless the court directs otherwise.

Do consultees agree?

YES

Paragraph 6.72

Consultation Question 6.

We invite consultees' views as to whether they are of the view that, in Scotland:

3. there is a need for greater consistency and clarity in provisions relating to the expenses of curators ad litem and reporting officers and, if so, how this should be addressed;
4. it should be provided by statute that, at the initial hearing or any subsequent hearing for a parental order, the court may make any such interim order or orders for parental responsibilities and parental rights as it sees fit; and/or
5. further procedural reform is needed and, if so, what that reform should be.

Paragraph 6.110

Consultation Question 7.

In respect of a domestic surrogacy arrangement, we provisionally propose that, before the child is conceived, where the intended parents and surrogate have:

6. entered into an agreement including the prescribed information, which will include a statement as to legal parenthood on birth,
7. complied with procedural safeguards for the agreement, and
8. met eligibility requirements,

on the birth of the child the intended parents should be the legal parents of the child, subject to the surrogate's right to object.

Do consultees agree?

NO

I vehemently disagree with this proposal. It contradicts the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. These require the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be freely given AFTER the child's birth. I believe that this important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements, in both an international and a domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all of the implications need to be fully understood. There is no evidence in the consultation paper that the law commissioners have considered these more general implications fully, if at all.

I understand that the proposal to automatically grant the 'intended parents' legal parenthood at birth is based on (or justified by) in part at least the wishes expressed by some 'surrogate' mothers prior to the consultation. I do not agree that these claimed wishes alone justify measures that contravene the recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children and to protect birth mothers.

Bringing a child into the world is a great responsibility and it is not ethical to encourage or condone a system that would require women to deliberately conceive and subsequently give birth with the expectation that they would have little or no legal responsibility for the child. The rights of the child must be prioritised regardless whether that is what some 'surrogate' mothers say they want or not.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.13

Consultation Question 8.

We provisionally propose that regulated surrogacy organisations and licensed clinics should be under a duty to keep a record of surrogacy arrangements under the new pathway to which they are a party, with such records being retained for a specified minimum period.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations.

We invite consultees' views as to what the length of that period should be: whether 100 years or another period.

Consultation Question 9.

We provisionally propose that the prohibition on the use of anonymously donated gametes should apply to traditional surrogacy arrangements with which a regulated surrogacy organisation is involved.

Do consultees agree?

OTHER

I profoundly disagree with the proposal for regulated surrogacy organisations, because they would inevitably lead to a normalising of surrogacy and an increase in its prevalence.

Paragraph 8.21

Consultation Question 10.

We invite consultees' views as to whether the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

I profoundly disagree with the proposals for the 'new pathway.'

Paragraph 8.22

Consultation Question 11.

We provisionally propose that:

9. the surrogate should have the right to object to the acquisition of legal parenthood by the intended parents, for a fixed period after the birth of the child;

10. this right to object should operate by the surrogate making her objection in writing within a defined period, with the objection being sent to both the intended parents and the body responsible for the regulation of surrogacy; and

11. the defined period should be the applicable period for birth registration less one week.

Do consultees agree?

NO

I profoundly disagree with the proposal that the 'intended parents' should automatically acquire legal parenthood at birth and that the birth mother has only a limited time to object. This contradicts the UN Special Rapporteur's recommendations,* including that the birth mother is the legal parent at birth and that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements are taken by a court or other competent authority AFTER the birth, with the child's best interests being the paramount consideration.

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia.

After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.35

Consultation Question 12.

We provisionally propose that, where the surrogate objects to the intended parents acquiring legal parenthood within the period fixed after birth, the surrogacy arrangement should no longer be able to proceed in the new pathway, with the result that:

12. the surrogate will be the legal parent of the child;
13. if one of the intended parents would, under the current law, be a legal parent of the child, then he or she will continue to be a legal parent in these circumstances; and
14. the intended parents would be able to make an application for a parental order to obtain legal parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' – particularly with the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.36

Consultation Question 13.

We provisionally propose that, in the new pathway:

15. the intended parents should be required to make a declaration on registering the birth of the child that they have no reason to believe that the surrogate has lacked capacity at any time during the period in which she had the right to object to the intended parents acquiring legal parenthood;

16. if the intended parents cannot provide this declaration then, during the period in which she has the right to object to the intended parents acquiring legal parenthood, the surrogate should be able to provide a positive consent to such acquisition; and

17. if the intended parents are unable to make this declaration and the surrogate is unable to provide the positive consent within the relevant period, the surrogacy arrangement should exit the new pathway and the intended parents should be able to make an application for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects.

The birth mother should be the legal parent at birth, along with her husband, spouse or civil partner if she has one – and decisions about any subsequent change of legal parenthood and parental responsibility must be taken by a court or other competent authority AFTER the birth and with the child's best interest being the paramount consideration, in accordance with the UN Special Rapporteur's recommendations.*

The birth registration period is only 6 weeks and is shorter in Scotland – so the proposal is to give the birth mother less than 5 weeks to object. The 6 weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. In a normal delivery there might have been significant blood loss leading to anaemia. After a Caesarean, to these changes is added all the stress of recovering from major abdominal surgery. It is totally inappropriate to expect the birth mother to make a calm and considered decision of such huge and life-changing significance at such a time – not to mention following through with the practical requirements of putting it in writing and ensuring it is received before the expiry of the deadline.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.37

Consultation Question 14.

1.15 We provisionally propose that, in the new pathway, the welfare of the child to be born as a result of the surrogacy arrangement:

(1.15.1) should be assessed in the way set out in Chapter 8 of the current Code of Practice;

(1.15.2) either the regulated surrogacy organisation or regulated clinic, as appropriate, should be responsible for ensuring that this procedure is followed; and

(1.15.3) there should be no requirement for any welfare assessment of the child after his or her birth.

Do consultees agree?

NO

I profoundly disagree with this proposal. It contradicts the UN Special Rapporteur's recommendation* that all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth and that the child's best interests are the paramount consideration. A welfare assessment is an absolute requirement if an informed decision is to be made about the child's best interest. Therefore a welfare assessment MUST be made after the child's birth.

The pre-conception assessment would typically have been carried out more than a year before the birth of the child. Much can change in that time.

The justification that a welfare assessment after the birth of the child is not necessary because parents of children born through the normal process are not subject to such checks does not hold. Pregnancy, birth and the post-partum changes are intense physical and existential experiences that change you and prime you to love and be sensitive to the new-born child and rise to the challenge of the enormous task of raising him or her to adulthood. For obvious reasons 'intended parents' do not have this advantage.

In addition, pregnancy and childbirth are a huge investment of the birth mother's physical, physiological and emotional resources, which means she has already made a huge and unquantifiable, nearly year-long, commitment to the child. This means her practical and emotional commitment to the child is already well-developed, giving her the best chance of surmounting all the difficulties that will inevitably arise over the course of the child's childhood and adolescence.

The 'intended parents' have had no similar experience. The investment of financial resources does not in any way prepare you for the practical reality of caring for a new-born child and the long road of nurturing and shepherding him or her to adulthood.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.51

Consultation Question 15.

1.1 We provisionally propose that, for a child born as a result of a surrogacy arrangement under the new pathway, where the surrogate has exercised her right to object to the intended parents' acquisition of legal parenthood at birth, the surrogate's spouse or civil partner, if any, should not be a legal parent of the child.

Do consultees agree?

NO

I profoundly disagree with the 'new pathway.'

There is a very real risk that spouses and partners will coerce women into being a 'surrogate' for financial gain. This risk is likely to increase if he or she does not have legal parenthood or parental responsibility for any children born of the arrangement. This is enough reason to reject this proposal.

However, it also represents a significant change in legal parenthood rules and would therefore have an implication for all children, all families because it would set a precedent. It should not be introduced without a full assessment of all the implications, including on the rights of mothers and children. There is no evidence that the law commissioners have carried out any such assessment.

We invite consultees' views as to whether, in the case of a surrogacy arrangement outside the new pathway, the surrogate's spouse or civil partner should continue to be a legal parent of the child born as a result of the arrangement.

YES

The normal legal parenthood rules should apply. This will reduce the risk of spouses and partners coercing women into surrogacy for financial gain.

Paragraph 8.57

Consultation Question 16.

We provisionally propose that, in the new pathway, where a child born of a surrogacy arrangement is stillborn:

18. the intended parents should be the legal parents of the child unless the surrogate exercises her right to object; and

19. the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period of the right to object.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' – particularly the 'intended parents' acquiring legal parenthood automatically at birth unless the birth mother objects. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn.

We provisionally propose that, outside the new pathway, where a child born of a surrogacy arrangement is stillborn, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the stillbirth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the birth parents in this situation. The birth mother should always be the legal parent of the child at birth and this should not change if the child is stillborn and the registration should accurately reflect this.

Paragraph 8.77

Consultation Question 17.

We provisionally propose that, for surrogacy arrangements outside the new pathway, where the child dies before the making of the parental order, the surrogate should be able to consent to the intended parents being registered as the parents before the expiry of the period allowed for the registration of the birth, provided that the intended parents have made a declaration to the effect that the relevant criteria for the making of a parental order are satisfied, on registration of the birth.

Do consultees agree?

NO

I profoundly disagree with the 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and if the child dies before the parental order, the registration of birth should accurately reflect that the birth mother was the legal parent.

Paragraph 8.79

Consultation Question 18.

For surrogacy arrangements in the new pathway, we invite consultees' views as to whether, where the surrogate dies in childbirth or before the end of the period during which she can exercise her right to object, the arrangement should not proceed in the new pathway and the intended parents should be required to make an application for a parental order.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 8.80

Consultation Question 19.

We provisionally propose that, for surrogacy arrangements in the new pathway, where both intended parents die during the surrogate's pregnancy, the intended parents should be registered as the child's parents on birth, subject to the surrogate not exercising her right to object within the defined period.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I disagree with the deceased 'intended parents' being registered as the legal parents in this situation. The birth mother should always be the legal parent of the child at birth and the registration of birth should accurately reflect this.

We invite consultees' views as to whether, for surrogacy arrangements outside the new pathway, where both intended parents die during the surrogate's pregnancy or before a parental order is made:

20. it should be competent for an application to be made, by a person who claims an interest under section 11(3)(a) of the Children (Scotland) Act 1995, or who would be permitted to apply for an order under section 8 of the Children Act 1989:

1. for an order for appointment as guardian of the child, and
2. for a parental order in the name of the intended parents, subject to the surrogate's consent; or

21. the surrogate should be registered as the child's mother and it should not be possible for the intended parents to be registered as the child's parents, but that there should be a procedure for the surrogate to provide details of the intended parents, and, if relevant, gamete donors, for entry onto the register of surrogacy arrangements.

The intended parents should NOT be registered as the child's parents if they are already deceased – so option (2) is preferable.

Paragraph 8.81

Consultation Question 20.

We provisionally propose that, where an application is made for a parental order by a sole applicant under section 54A:

22. the applicant should have to make a declaration that it was always intended that there would only be a single applicant for a parental order in respect of the child concerned or to supply the name and contact details of the other intended parent;

23. if details of another intended parent are supplied, a provision should be made for notice to be given to the potential second intended parent of the application and an opportunity given to that party to provide notice of opposition within a brief period (of, say, 14 to 21 days); and

24. if the second intended parent gives notice of his or her intention to oppose, he or she should be required to make his or her own application within a brief period (say 14 days), otherwise the application of the first intended parent will be determined by the court.

Do consultees agree?

YES

Consultation Question 21.

We invite consultees' views as to:

25. a temporary three-parent model of legal parenthood in surrogacy cases; and
26. how the legal parenthood of the surrogate should be extinguished in this model.

I profoundly oppose a three-parent model of legal parenthood, even if it is temporary. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child with the best interests of the child being the paramount consideration, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.91

Consultation Question 22.

We invite consultees' views:

27. as to whether there should be any additional oversight in the new pathway that we have proposed, leading to the acquisition of legal parenthood by the intended parents at birth; and
28. if so, as to whether should this oversight be:
 1. administrative, or
 2. judicial.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should be the legal parent and have parental responsibility at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child based on the best interests of the child, as recommended by the UN Special Rapporteur.*

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.93

Consultation Question 23.

In respect of England and Wales, we invite consultees' views as to:

29. whether the welfare checklist, contained in section 1(3) of the Children Act 1989, should be amended to provide for the court to have regard to additional specific factors in the situation where it is considering the arrangements for a child in the context of a dispute about a surrogacy arrangement; and

30. if so, as to what those additional factors should be.

The child's best interests should drive all decisions about the child in the event of a dispute about a surrogacy arrangement. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and conforms to the UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.120

Consultation Question 24.

In respect of England and Wales, we invite consultees' views:

31. as to whether the checklist, contained in section 1(4) of the ACA 2002 (as applied and modified by regulation 2 and paragraph 1 of Schedule 1 of the 2018 Regulations) should be further amended to provide for the court to have regard to additional specific factors in the situation where it is considering whether to make a parental order; and

32. what those additional factors should be.

The child's best interests should drive all decisions when considering whether to make a parental order. The welfare checklist provides a comprehensive summary of the issues to be considered and is adequate as it is, and it conforms to UN Special Rapporteur's recommendation* that the child's best interest is the paramount consideration. I therefore do not believe any other factors should be added.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.121

Consultation Question 25.

We invite consultees' view as to whether section 10 of the Children Act 1989 should be amended to add the intended parents to the category of those who can apply for a section 8 order without leave.

NO

There are real risks of the sale and trafficking of children and of exploitation of the birth mother and her reproductive capacities in all surrogacy arrangements. The court should therefore always have oversight of the arrangements. I am also concerned that there should be no liberalisation of the law on surrogacy because of the potential human rights abuses involved. I do not believe that 'intended parents' should be added to the list of those who can apply for a section 8 order without leave.

Paragraph 8.123

Consultation Question 26.

We provisionally propose that, where a child is born as a result of a surrogacy arrangement outside the new pathway, the intended parents should acquire parental responsibility automatically where:

- 33. the child is living with them or being cared for by them; and
- 34. they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with this proposal. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, as recommended by the UN Special Rapporteur* in order to reduce the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify measures that contravene recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no legal responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.132

Consultation Question 27.

We provisionally propose that, where a child is born as a result of a surrogacy arrangement in the new pathway:

35. the intended parents should acquire parental responsibility on the birth of the child; and

36. if the surrogate exercises her right to object, the intended parents should continue to have parental responsibility for the child where the child is living with, or being cared for by, them, and they intend to apply for a parental order.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should acquire parentage or parental responsibility automatically. The birth mother should be the legal parent at birth and all decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

I understand that the decision to automatically grant the 'intended parents' parental responsibility is based on (or justified by) the wishes expressed by some 'surrogate' mothers prior to the consultation. Their wishes alone do not justify a measure that contravenes recommendations of the UN Special Rapporteur and the provisions of the Hague Convention that are designed to reduce the risk of the sale and trafficking of children.

Bringing a child into the world is a great responsibility and it is not ethical to condone a system that would require women to give birth with the expectation that they would have no responsibility for that child – other than a temporary right to 'object'. The rights of the child must be prioritised regardless whether that is what some birth mothers say they wish.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.134

Consultation Question 28.

We provisionally propose that, for surrogacy arrangements within the new pathway, the surrogate should retain parental responsibility for the child born as a result of the arrangement until the expiry of the period during which she can exercise her right to object, assuming that she does not exercise her right to object.

Do consultees agree?

OTHER

I agree that the birth mother should have parental responsibility for the child but NOT that the 'intended parents' should get automatic legal parenthood and parental responsibility.

All decisions involving legal parenthood and parental responsibility in surrogacy arrangements should be taken by a court or other competent authority AFTER the birth of the child, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their women's reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.139

Consultation Question 29.

For all surrogacy arrangements, we invite consultees' views as to:

37. whether there is a need for any restriction to be placed on the exercise of parental responsibility by either the surrogate (or other legal parent), or the intended parents, during the period in which parental responsibility is shared; and

38. whether it should operate to restrict the exercise of parental responsibility by the party not caring for the child or with whom the child is not living.

I profoundly disagree with the proposals for the 'new pathway'. The birth mother should have legal parenthood and parental responsibility at and after the birth and all subsequent decisions involving legal parenthood and parental responsibility should be taken by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 8.140

Consultation Question 30.

We provisionally propose that traditional surrogacy arrangements should fall within the scope of the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 9.29

Consultation Question 31.

We invite the views of independent surrogates, and intended parents who have used independent surrogacy arrangements, to tell us about their experience. In particular, we would be interested to hear about any health screening, counselling and legal advice that took place.

N/A

Paragraph 9.35

Consultation Question 32.

We invite consultees' views as to whether independent surrogacy arrangements should be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

We invite consultees' views as to how independent surrogacy arrangements might be brought within the scope of the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. It is inappropriate and contradicts binding obligations under the UNCRC and its first optional protocol.

Paragraph 9.36

Consultation Question 33.

We provisionally propose that:

39. there should be regulated surrogacy organisations;

NO

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

40. there should be no requirement for a regulated surrogacy organisation to take a particular form; and

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

41. each surrogacy organisation should be required to appoint an individual responsible for ensuring that the organisation complies with regulation.

Do consultees agree?

OTHER

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.61

Consultation Question 34.

We provisionally propose that the person responsible must be responsible for:

- 42. representing the organisation to, and liaising with, the regulator;
- 43. managing the regulated surrogacy organisation with sufficient care, competence and skill;
- 44. ensuring the compliance of the organisation with relevant law and regulation, including the creation, maintenance and operation of necessary policies and procedures;
- 45. training any staff, including that of the person responsible; and
- 46. providing data to the regulator and to such other person as required by law.

Do consultees agree?

LEAVE ALL CHECK BOXES BLANK (i.e. none of the above)

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

We invite consultees to identify any other responsibilities which a responsible individual should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

We invite consultees' views as to what experience, skills and qualifications a person responsible for a surrogacy organisation should have.

I disagree with this proposal because regulated surrogacy organisations would sanction and legitimise surrogacy and inevitably lead to an increase in its prevalence. I consider surrogacy to be a violation of the human rights of both women and children.

Paragraph 9.62

Consultation Question 35.

We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy. Even if surrogacy organisations are non-profit making, they will inevitably be driven by commercial imperatives (for example, to cover costs, salaries, etc.) and will need to continuously seek new business and to convince or coerce more women to act as 'surrogates.'

Deriving income from surrogacy is abhorrent and, given the parallels between surrogacy and prostitution, is a potential violation of Article 6 of CEDAW, which prohibits third-parties profiting or otherwise benefiting from the prostitution of women.

Paragraph 9.84

Consultation Question 36.

We invite consultees' views as to what should be included in the definition of matching and facilitation services.

I disagree with organisations being able to provide matching and facilitation services, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.94

Consultation Question 37.

We provisionally propose that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

We invite consultees' views as to whether only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway.

I profoundly disagree with the proposals for the 'new pathway'. I disagree with regulated surrogacy organisations or any other organisations being able to provide matching and facilitation services

for any type of surrogacy, because that would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children.

Paragraph 9.95

Consultation Question 38.

We invite consultees' views as to the sanctions that should be available against organisations that offer matching and facilitation services without being regulated to do so, and whether these should be criminal, civil or regulatory.

I do not accept that matching and facilitation services should be allowed – regardless who they are provided by – because they would inevitably lead to an increase in surrogacy, which I consider a violation of the human rights of both women and children. Offering such services should be a criminal offence.

Paragraph 9.97

Consultation Question 39.

We provisionally propose that the remit of the Human Fertilisation and Embryology Authority be expanded to include the regulation of regulated surrogacy organisations, and oversight of compliance with the proposed legal requirements for the new pathway to legal parenthood.

Do consultees agree?

OTHER

I disagree with the proposal for regulated surrogacy organisations because they would sanction surrogacy, which I consider a violation of the human rights of both women and children, and would drive an increase in surrogacy.

If consultees agree, we invite their views as to how the Authority's Code of Practice should apply to regulated surrogacy organisations, including which additional or new areas of regulation should be applied.

Paragraph 9.117

Consultation Question 40.

We provisionally propose that surrogacy agreements should remain unenforceable (subject to the exception we provisionally propose in Consultation Question 88 in relation to financial terms).

Do consultees agree?

YES

Paragraph 9.129

Consultation Question 41.

We provisionally propose that there should be no prohibition against charging for negotiating, facilitating and advising on surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with this proposal and the opening up of surrogacy in this country, because I consider it a violation of the human rights of both women and the child. The idea of organisations charging to facilitate it is utterly abhorrent and violates the spirit, if not the letter, of Article 6 of CEDAW, given the parallels between surrogacy and prostitution. Article 6 prohibits the exploitation of the prostitution of women – which includes deriving any form of benefit from women's prostitution.

Paragraph 9.135

Consultation Question 42.

We provisionally propose that the current ban on advertising in respect of surrogacy should be removed, with the effect that there will be no restrictions on advertising anything that can lawfully be done in relation to surrogacy arrangements.

Do consultees agree?

NO

I VEHEMENTLY disagree with removing the current ban on advertising in respect of surrogacy. Surrogacy is a violation of the human rights of both women and children, and enabling advertising sites (and other 'service' organisations) to financially benefit from it is abhorrent.

At this time of increasing poverty and inequality, it would be unethical to promote the idea that being a 'surrogate' mother would be a solution to an impoverished woman's financial problems. If this proposal is implemented, Facebook and Google are likely present surrogacy ads to female students and young women suggesting that becoming a 'surrogate' would provide the solution to their financial worries. The most disadvantaged young women would be the most vulnerable to this idea and it is doubtful it would ever truly be in her best interest.

Just as we protect disadvantaged people from the temptation of selling their kidneys for money, we need to protect disadvantaged women from the temptation of renting their wombs. This means that advertising of surrogacy MUST remain banned.

Paragraph 9.145

Consultation Question 43.

We provisionally propose that, in England and Wales, where the making of a parental order in respect of a child born of a surrogacy arrangement has been recorded in the Parental Order Register, the child should be able to access his or her original birth certificate at the age of 18.

Do consultees agree?

YES

Paragraph 10.80

Consultation Question 44.

We provisionally propose that where children are born of surrogacy arrangements that result in the intended parents being recorded as parents on the birth certificate, the full form of that certificate should make clear that the birth was the result of a surrogacy arrangement.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. I do not agree that the 'intended parents' should be recorded as parents on the original birth certificate. The birth mother should be recorded as the birth mother on the birth certificate and all decisions involving legal parenthood and parental responsibility should be taken after the birth by a court or other competent authority, with the child's best interest the paramount consideration. This is the recommendation of the UN Special Rapporteur* and has the aim of reducing the risk of the sale and trafficking of children and the exploitation of women and their reproductive capacities.

However, if the 'intended parents' are recorded as parents on the birth certificate, the full form of the certificate should make clear that the birth was the result of a surrogacy arrangement.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 10.85

Consultation Question 45.

We invite consultees' views as to whether the birth registration system in England and Wales requires reform and, if so, which reforms they would like to see.

I do not consider the birth registration system to be in need for reform. I am particularly opposed to changes to allow for the registration of three parents or for anyone other than the birth mother to be recorded as the mother on the original birth certificate. Such proposals could lead to the facilitation of the sale of children and an erosion of mothers' rights and a diluting of the understanding that the relationship between the birth mother and the child is unique.

Paragraph 10.87

Consultation Question 46.

We provisionally propose that, in England and Wales, from the age of 18, a child who has been the subject of a parental order should be able to access all the documents contained in the court's file for those parental order proceedings.

Do consultees agree?

YES

Paragraph 10.89

Consultation Question 47.

We provisionally propose that a national register of surrogacy arrangements should be created to record the identity of the intended parents, the surrogate and the gamete donors.

Do consultees agree?

YES

We provisionally propose that:

47. the register should be maintained by the Authority;

48. the register should record information for all surrogacy arrangements, whether in or outside the new pathway, provided that the information about who has contributed gametes for the conception of the child has been medically verified, and that the information should include:

1. identifying information about all the parties to the surrogacy arrangement, and
2. non-identifying information about those who have contributed gametes to the conception of the child; and

49. to facilitate the record of this information, the application form/petition for a parental order should record full information about a child's genetic heritage where available and established by DNA or medical evidence, recording the use of an anonymous gamete donor if that applies.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway' and regulated surrogacy organisations. However, should surrogacy take place, it is important that the children have access to information about their origins and these proposals seem generally sound, except that the information held on gamete donors should also include identifying information – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.102

Consultation Question 48.

We invite consultees' views as to whether non-identifying information about the surrogate and the intended parents should be recorded in the national register of surrogacy arrangements and available for disclosure to a child born of a surrogacy arrangement.

I agree but with the proviso that all the information should be identifying – because otherwise it trivialises the creation of a child and denies the child the right to know her or his genetic parentage.

Paragraph 10.104

Consultation Question 49.

We provisionally propose that a child born of a surrogacy arrangement should be able to access the information recorded in the register from the age of 18 for identifying information, and 16 for non-identifying information (if such information is included on the register), provided that he or she has been given a suitable opportunity to receive counselling about the implications of compliance with this request.

Do consultees agree?

YES

We invite consultees' views as to whether a child under the age of 18 or 16 (depending on whether the information is identifying or non-identifying respectively) should be able to access the information in the register and, if so, in which circumstances:

50. where his or her legal parents have consented;

51. if he or she has received counselling and the counsellor judges that he or she is sufficiently mature to receive this information; and/or

52. in any other circumstances.

I agree with (1) and (2) and believe there might be other circumstances where this is reasonable.

Paragraph 10.110

Consultation Question 50.

We invite consultees' views as to whether there should be any provision for those born of a surrogacy arrangement to make a request for information to disclose whether a person whom he or she is intending to marry, or with whom he or she intends to enter into a civil partnership or intimate physical relationship, was carried by the same surrogate.

YES, this should be possible.

Paragraph 10.114

Consultation Question 51.

We provisionally propose that where two people are born to, and genetically related through, the same surrogate, they should be able to access the register to identify each other, if they both wish to do so.

Do consultees agree?

YES

We invite consultees' views as to whether there should be provision to allow people born to the same surrogate – but who are not genetically related – to access the register to identify each other, if they both wish to do so.

YES, I agree.

Paragraph 10.121

Consultation Question 52.

We invite consultees' views as to whether provision should be made to allow a person carried by a surrogate, and the surrogate's own child, to access the register to identify each other, if they both wish to do so:

53. if they are genetically related through the surrogate; and/or

54. if they are not genetically related through the surrogate.

YES to both (1) and (2)

Paragraph 10.123

Consultation Question 53.

For surrogacy arrangements outside the new pathway, we invite consultees' views as to whether details of an intended parent who is not a party to the application for a parental order should be recorded in the register.

The intended parent who is not a party to the application for a parental order should be recorded in the register.

Paragraph 10.128

Consultation Question 54.

We provisionally propose that the six month time limits in sections 54 and 54A of the HFEA 2008 for making a parental order application should be abolished.

Do consultees agree?

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 11.20

Consultation Question 55.

We provisionally propose that:

55. the current circumstances in which the consent of the surrogate (and any other legal parent) is not required, namely where a person cannot be found or is incapable of giving agreement, should continue to be available;

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

56. the court should have the power to dispense with the consent of the surrogate, and any other legal parent of the child, in the following circumstances:

1. where the child is living with the intended parents, with the consent of the surrogate and any other legal parent, or
2. following a determination by the court that the child should live with the intended parents; and

57. the court's power to dispense with consent should be subject to the paramount consideration of the child's welfare throughout his or her life guided by the factors set out in section 1 of the Adoption and Children Act 2002 and, in Scotland, in line with the section 14(3) of the Adoption and Children (Scotland) Act 2007.

Do consultees agree?

NO

I disagree with this because it is a violation of women's rights and would increase the risk of child trafficking and exploitation of the rental of women's wombs. An adoption order can be considered as an option when a parental order is not possible.

Paragraph 11.58

Consultation Question 56.

We provisionally propose that, both for a parental order and in the new pathway, the intended parents or one of the intended parents must be domiciled or habitually resident in the UK, Channel Islands or Isle of Man.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway'. The 'intended parents' should be domiciled (and not simply habitually resident) in the UK in order to avoid surrogacy tourism.

We invite consultees' views as to whether there should be any additional conditions imposed on the test of habitual residence, for example, a qualifying period of habitual residence required to satisfy the test.

I profoundly disagree with opening up parental orders to 'intended parents' who are habitual residents but not domiciled in the UK – because of the risk of surrogacy tourism.

Paragraph 12.15

Consultation Question 57.

We invite consultees' views on whether:

58. the qualifying categories of relationship in section 54(2) of the HFEA 2008 should be reformed and, if so, how; or

59. the requirement should be removed, subject to two persons who are within the prohibited degrees of relationship being prevented from applying.

The qualifying categories of relationship should not be reformed or removed.

Paragraph 12.29

Consultation Question 58.

We provisionally propose that to use the new pathway, intended parents should be required to make a declaration in the surrogacy agreement that they intend for the child's home to be with them.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 12.34

Consultation Question 59.

We provisionally propose that the new pathway –

60. should not impose a requirement that the intended parent, or one of the intended parents, provide gametes for the conception of the child, so that double donation of gametes is permitted, but

61. that double donation should only be permitted in cases of medical necessity, meaning that there is not an intended parent who is able to provide a gamete due to infertility.

Do consultees agree?

NO

I profoundly disagree with the proposals for the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

We invite consultees' views as to whether double donation should be permitted under the parental order pathway (to the same extent that it may be permitted in the new pathway) in domestic surrogacy arrangements.

I profoundly disagree with the proposals for the 'new pathway' and all other proposals that are likely to result in an increase in surrogacy. I therefore do not believe that double donation should be permitted under the parental order pathway in domestic surrogacy arrangements.

We provisionally propose that the requirement that the intended parent or one of the intended parents contribute gametes to the conception of the child in the parental order pathway should be retained in international surrogacy arrangements.

Do consultees agree?

YES

Paragraph 12.64

Consultation Question 60.

We provisionally propose that if the requirement for a genetic link is retained for domestic cases outside the new pathway, the requirement should not apply, subject to medical necessity, if the court determines that the intended parents in good faith began the surrogacy arrangement in the new pathway but were required to apply for a parental order.

Do consultees agree?

NO

I fundamentally disagree with proposals to introduce the 'new pathway' and believe the genetic link should be retained. I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.71

Consultation Question 61.

We provisionally propose that if double donation is permitted only in cases of medical necessity, an exception should be made to allow a parental order to be granted to a single parent without a genetic link where the intended parent's former partner provides gametes but the intended parents' relationship breaks down before the grant of a parental order.

Do consultees agree?

NO

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.76

Consultation Question 62.

We invite consultees' views as to whether there should be a requirement that a surrogacy arrangement has been used because of medical necessity:

62. for cases under the new pathway to parenthood; and/or

63. for cases where a post-birth parental order application is made.

I oppose surrogacy and believe that it is a fundamental violation of women's and children's rights and that it should therefore be banned. I dispute that surrogacy is ever a 'medical necessity.'

We invite consultees' views as to how a test of medical necessity for surrogacy, if it is introduced, should be defined and assessed.

I dispute that surrogacy is ever a 'medical necessity.'

Paragraph 12.94

Consultation Question 63.

We provisionally propose that in order to use the new pathway to parenthood, information identifying the child's genetic parents and the surrogate must be provided for entry on the national register of surrogacy agreements prior to registration of the child's birth.

Do consultees agree?

OTHER

I profoundly oppose the introduction of the 'new pathway'. However, I support the requirement in any surrogacy arrangements for the recording of the identity of all genetic parents and the birth mother.

We invite consultees' views as to whether it should be a condition for an application for a parental order that:

64. those who contributed gametes are entered on the national register of surrogacy agreements; and/or

65. if it remains a requirement that one of the intended parents provided gametes in the conception of the child, that the genetic link is demonstrated to the court with medical or DNA evidence.

While I oppose surrogacy and want to see it banned, I support this condition for a parental order in the circumstances described in both (1) and (2).

We provisionally propose that it should be a condition for the application of a parental order that the identity of the surrogate is entered on the national register of surrogacy agreements.

Do consultees agree?

YES

While I oppose surrogacy and want to see it banned, if it happens, I support this provision.

Paragraph 12.115

Consultation Question 64.

We provisionally propose that there should be no maximum age limit for the grant of a parental order. The age of the intended parents should continue to be taken into account in the assessment of the welfare of the child in applications to grant a parental order.

Do consultees agree?

NO

I am opposed to surrogacy and would like to see it banned, because it is a violation of both women's and children's human rights.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. Surrogacy is therefore particularly unethical when the 'intended parents' are old. If surrogacy is to be opened up, a maximum age limit for 'intended parents' is imperative. This will make it clear that society does not condone older people entering a surrogacy arrangement and will make it less

likely that older people will go ahead with such an arrangement and present the court with a fait accompli.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age but not beyond. It is therefore imperative that age limits are set very carefully.

We invite consultees' views as to whether under the new pathway there should be a maximum age limit for intended parents, and if so, what it should be.

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a maximum age limit for 'intended parents' and it should be 45.

Raising children is demanding and requires vital parents who are engaged with life and society and who can reasonably be expected to survive in good health until the child reaches adulthood. I am opposed to surrogacy per se, because it is a violation of both women's and children's human rights. However, it is particularly unethical when the 'intended parents' are old. I therefore consider that a maximum age limit for 'intended parents' is important. This will make it clear that society does not consider it acceptable for older people to enter into a surrogacy arrangement and will make it less likely that they will.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement up to that age. It is therefore imperative that age limits are set very carefully.

We provisionally propose that intended parents should be required to be at least 18 years old at the time that they enter into a surrogacy agreement under the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. However, if surrogacy is to be allowed, there should be a minimum age for 'intended parents' and it should be much older than 18. I suggest that 25 would be more appropriate.

Any age limits in the legislation will have a normative effect – and will inevitably be understood as society sanctioning entering a surrogacy arrangement at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year olds to believe that it would be reasonable for them to become 'parents' through a surrogacy arrangement – before they have taken even their first steps into independence and adulthood?

Paragraph 12.133

Consultation Question 65.

We provisionally propose that surrogates should be required to be at least 18 years of age (at the time of conception), in order for the court to have the power to make a parental order.

Do consultees agree?

OTHER

I am opposed to surrogacy per se and would like to see it banned, because I consider it a violation of both women's and children's human rights.

At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

We provisionally propose that surrogates should be required to be at least 18 years old at the time of entering into the surrogacy agreement within the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for a 'new pathway'. At 18 a woman is barely out of childhood and has not yet had an opportunity to establish herself as an adult. This means that she is particularly vulnerable to coercion and manipulation. There should be a significantly older minimum age for entering into a surrogacy arrangement and I suggest that 25 years would be more appropriate.

Any age limits will have a normative effect – and will inevitably be understood as society sanctioning surrogacy at that age. It is therefore imperative that age limits are set very carefully. What kind of society would want 18-year old girls to believe that entering a surrogacy arrangement is a reasonable thing for them to be doing before they have taken even their first steps into independence and adulthood?

Paragraph 12.144

Consultation Question 66.

We provisionally propose that medical testing of the surrogate, any partner of the surrogate, and any intended parent providing gametes should be required for the new pathway.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

We invite consultees' views as to whether the types of testing set out in the Code of Practice are feasible for traditional surrogacy arrangements outside a licensed clinic, and if not, which types of testing should be required for such arrangements.

Paragraph 13.16

Consultation Question 67.

We provisionally propose that, as a condition of being eligible for entry into the new pathway:

66. the surrogate, her spouse, civil partner or partner (if any) and the intended parents intending to enter into a surrogacy arrangement in the new pathway should be required to attend counselling with regard to the implications of entering into that arrangement; and
67. the implications counselling should be provided by a counsellor who meets the requirements set out in the Code of Practice at paragraphs 2.14 to 2.15.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.44

Consultation Question 68.

We provisionally propose that, for the new pathway, there should be a requirement that the surrogate and the intended parents should take independent legal advice on the effect of the law and of entering into the agreement before the agreement is signed.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.65

Consultation Question 69.

We provisionally propose that, as an eligibility requirement of the new pathway:

- (1) an enhanced criminal record certificate should be obtained for intended parents, surrogates and any spouses, civil partners or partners of surrogates;
- (2) the body overseeing the surrogate arrangement should not enable a surrogate arrangement to be proceed under the new pathway where a person screened is unsuitable for having being convicted of, or received a police caution for, any offence appearing on a prescribed list of offences; and
- (3) the body overseeing the surrogacy arrangement may also determine that a person is unsuitable based on the information provided in the enhanced record certificate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

We invite consultees' views as to whether the list of offences that applies in the case of adoption is appropriate in the case of surrogacy arrangements in the new pathway.

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 13.73

Consultation Question 70.

We invite consultees' views as to whether there should be a requirement that the surrogate has previously given birth as an eligibility requirement of the new pathway.

OTHER

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women who have never had a child of their own entering an arrangement to undergo pregnancy and childbirth for someone else. It is impossible to understand what pregnancy and childbirth are like and how they will change you until or unless you have had that experience yourself.

Paragraph 13.95

Consultation Question 71.

We provisionally propose that there should not be a maximum number of surrogate pregnancies that a woman can undertake as an eligibility requirement of the new pathway.

Do consultees agree?

NO

I am profoundly opposed to surrogacy and the introduction of the 'new pathway'.

Society should not condone women undergoing multiple 'surrogate' pregnancies and childbirths. Even the Kennel Club recognises that female dogs should not be allowed to undertake more than four pregnancies. It is abhorrent that female dogs have better protections than women would have under this proposal.

Paragraph 13.99

Consultation Question 72.

We invite consultees' views as to whether payment of costs by the intended parents to the surrogate should be able to be:

- 68. based on an allowance;
- 69. based on costs actually incurred by the surrogate, but without the need for production of receipts; or
- 70. based on costs actually incurred by the surrogate, and only on production of receipts.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.16

Consultation Question 73.

We invite consultees' views as to:

- 71. whether intended parents should be able to pay the surrogate essential costs relating to the pregnancy; and
- 72. the types of expenditure which should be considered "essential".

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual

essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.22

Consultation Question 74.

We invite consultees' views as to:

73. whether they consider that intended parents should be able to pay the surrogate additional costs relating to the pregnancy; and

74. the types of expenditure which should be considered additional, rather than essential.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above the actual essential costs of the pregnancy and birth – such as medical supplies, extra food and vitamins, and travel to medical appointments – backed up by receipts.

Paragraph 15.26

Consultation Question 75.

We invite consultees' views as to:

75. whether intended parents should be permitted to pay all costs that arise from entering into a surrogacy arrangement, and those unique to a surrogate pregnancy; and

76. the types of cost which should be included within this category.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.29

Consultation Question 76.

We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate her actual lost earnings (whether the surrogate is employed or self-employed).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.37

Consultation Question 77.

We invite consultees' views as to whether they consider that intended parents should be able to pay their surrogate either or both of the following lost potential earnings:

77. her lost employment-related potential earnings (as defined in paragraph 15.35 above); and/or

78. other lost potential earnings (as defined in paragraph 15.36 above).

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for lost earnings.

Paragraph 15.38

Consultation Question 78.

We invite consultees to share their experiences:

79. of the impact that payments received by a surrogate from the intended parents has had on the surrogate's entitlement to means-tested social welfare benefits; and

80. where a surrogacy arrangement has had an impact on the surrogate's entitlement to means-tested social welfare benefits, how that has been addressed in their surrogacy arrangement.

N/A

Paragraph 15.47

Consultation Question 79.

We invite consultees' views as to whether intended parents should be able to pay compensation to the surrogate for the following:

81. pain and inconvenience arising from the pregnancy and childbirth;
82. medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or
83. specified complications, including hyperemesis gravidarum, pre-eclampsia, an ectopic pregnancy, miscarriage, termination, caesarean birth, excessive haemorrhaging, perineal tearing, removal of fallopian tubes or ovaries or a hysterectomy.

It is absurd to propose that one could place a monetary value on the pain of adverse pregnancy outcomes. In putting a price tag on perineal tear for example, some mothers report little pain or symptoms, others have profound ongoing fear of vaginal penetration, which can result in very significant emotional and relationship difficulties. Infection may complicate healing, and some women report long term sequelae from this, such as impaired wound healing.

Haematology conditions should also be considered. Blood loss, for example due to placental haemorrhage can be very significant, and potentially result in emergency hysterectomy and blood transfusion to save the life of the mother. It is a fact that although blood is thoroughly screened in the UK there still remains the potential for blood borne illnesses to be transmitted, and the fact that some of these may not have been identified yet by researchers is also a real risk to a mother receiving transfusion. Persons who have had a blood transfusion are currently unable to donate blood themselves in the UK, due to the risk of (vCJD) transmission. This is an indication of the gravity of receiving blood products.

No medical intervention is EVER risk free. Receiving multiple blood products in the context of Massive Transfusion Protocol (eg platelets, Fresh Frozen Plasma, cryoprecipitate) only heighten those risks.

Conditions such as HELLP (Haemolysis, Elevated Liver enzymes, Low Platelets) can be fatal, and although the maternal mortality rate is low, it can have significant sequelae, including renal failure potentially requiring dialysis, placental abruption (potentially fatal for mother and baby) permanent liver damage and retinal detachment resulting in visual impairment.

Each of these conditions have long term consequences for a woman, psychologically, physically and emotionally, and may also affect her ability to return to work or care for other children.

Also, the late complications of childbirth have been disregarded. Late consequences of childbirth can include vaginal or rectal prolapse, urinary and faecal incontinence. Women who have had a C section may experience ongoing pain around the scar. Some sources quote this as affecting between 6 and 18 percent of women. These symptoms can be profoundly distressing, and may take years to present (conversely, may present immediately).

How could we ensure that women suffering these complications are compensated? They are multifactorial, and risk increases with instrumented delivery and parity. How would it be proposed to unpick the role of a surrogate pregnancy in causing these symptoms in relation to other risk factors, for example parity, smoking history, personal medical history?

Psychiatric conditions are also absent from this list. Complications including depression and anxiety may be worsened by pregnancy. Other mental health conditions such as post natal depression and post partum psychosis can be fatal, and impact on a woman's health for many years to come. I'm quite shocked that none of these conditions have been explicitly mentioned and it does make me wonder how the list of complications was created. I'd also like to know what level of haemorrhage would be considered "excessive".

The wording of the question "should" be able to pay compensation is not the same as being mandated to do so. This potentially creates a situation where some "luckier" women would receive compensation others would not.

All of the above illustrates the risks of surrogacy and confirms my support for a total ban on surrogacy in the UK, as there is in Spain.

We invite consultees' views as to whether there are any other matters in respect of which intended parents should be able to pay the surrogate compensation.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

We invite consultees' views as to whether the level of compensation payable should be:

- 84. a fixed fee set by the regulator (operating as a cap on the maximum payable), or
- 85. left to the parties to negotiate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain.

Paragraph 15.53

Consultation Question 80.

We invite consultees views' as to whether intended parents should be able to pay compensation to the surrogate's family in the event of the pregnancy resulting in the

surrogate's death, including through payment of the cost of life assurance for the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question illustrates the risks of surrogacy and why I oppose it.

Paragraph 15.56

Consultation Question 81.

We invite consultees' views as to whether:

86. intended parents should be able to buy gifts for the surrogate; and

87. if so, specific provision should be made for these gifts to be modest or reasonable in nature.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to give the birth mother gifts.

Paragraph 15.60

Consultation Question 82.

We invite consultees' views as to whether it should be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy.

It should not be possible for the intended parents to agree to pay a woman for the service of undertaking a surrogacy. (checkbox)

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

We invite consultees' views as to whether, if provision is made for intended parents to pay a woman for the service of undertaking surrogacy, whether that the fee should be:

- 88. any sum agreed between the parties to the surrogacy; or
- 89. a fixed fee set by the regulator.

Leave both check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to pay the birth mother for her 'services'.

We invite consultees' views as to whether, if provision is made for intended parents to pay a woman a fixed fee for the service of undertaking surrogacy, what, if any, other payments the law should permit, in addition to that fixed fee:

- 90. no other payments;
- 91. essential costs relating to the pregnancy;
- 92. additional costs relating to the pregnancy;
- 93. lost earnings;
- 94. compensation for pain and inconvenience, medical treatment and complications, and the death of the surrogate; and/or
- 95. gifts.

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

I am therefore opposed to allowing the 'intended parents' to make any type of fee or payment to the birth mother for her 'services'.

Paragraph 15.69

Consultation Question 83.

We invite consultees' views as to whether it should be possible for any payment the law permits the intended parents to pay the surrogate for her services to be reduced in the event of a miscarriage or termination of the pregnancy.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

We invite consultees' views as to whether, if the law permits a fee payable to the surrogate to be able to be reduced in the event of a miscarriage or termination, whether such provision should apply:

- 96. in the first trimester of pregnancy only;
- 97. to any miscarriage or termination; or
- 98. some other period of time (please specify).

Leave all check boxes blank.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

This question is therefore not applicable because I oppose the payment of birth mothers for their 'services'. However, it illustrates the grave risks of surrogacy.

Paragraph 15.72

Consultation Question 84.

We provisionally propose that the types of payment that are permitted to be made to surrogates should be the same, whether the surrogacy follows our new pathway to parenthood or involves a post-birth application for a parental order.

Do consultees agree?

OTHER

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I am opposed to the 'new pathway' but consider that regardless of the surrogacy arrangement being used, the only payments that should ever be made are essential and basic expenses for which receipts are provided.

Paragraph 15.74

Consultation Question 85.

We invite consultees' views as to whether there are any categories of payment we have not discussed which they think intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.75

Consultation Question 86.

We invite consultees to express any further views they have about the payments that intended parents should be able to agree to pay to the surrogate.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

I would like to see a total ban on surrogacy in the UK, as there is in Spain. If surrogacy is accepted, however, legislation should allow no payments to the birth mother above actual essential costs, backed up by receipts.

Paragraph 15.76

Consultation Question 87.

We invite consultees' views as to whether there are specific methods of enforcing limitations that are placed on payments to surrogates that we should consider as part of our review:

99. for cases within the new pathway to parenthood; and

100. for cases where a parental order is made after the birth of the baby.

I am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it is not in their best interests.

The only payments that should be made are essential and basic expenses and for which receipts are provided. The judge or other competent authority should closely monitor all financial aspects of the arrangement (in line with the UN Special Rapporteur's recommendations*) and refuse the parental order when payments have exceeded basic expenses. If it is not a judge overseeing the arrangements, the competent authority should be totally independent and not, for example, an agency (or 'regulated surrogacy organisation') that has been involved in the arrangements in any way.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 15.89

Consultation Question 88.

We provisionally propose that financial terms of a surrogacy agreement entered into under the new pathway to parenthood should be enforceable by the surrogate.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

We provisionally propose that if the financial terms of a surrogacy agreement entered into under the new pathway become enforceable, the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Paragraph 15.99

Consultation Question 89.

We invite overseas surrogates (or bodies representing or advocating for surrogates) to share with us their experiences of international surrogacy arrangements.

N/A

Paragraph 16.10

Consultation Question 90.

We invite organisations focused on children's rights and welfare in the international context to share with us their views on our proposed reforms and consultation questions in this chapter.

N/A

Paragraph 16.12

Consultation Question 91.

We invite consultees to provide us with evidence of their experience of applying to register a child born through an international surrogacy arrangement as a British citizen and obtaining a passport for the child. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have about causes of delays in the process.

N/A

Paragraph 16.52

Consultation Question 92.

We provisionally propose that it should be possible for a file to be opened, and the application process for obtaining registration of a child born from an international surrogacy arrangement and obtaining a passport to begin, prior to the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.53

Consultation Question 93.

We invite consultees to provide us with evidence of the experience they have had of applying for a visa for a child born through an international surrogacy arrangement. In particular, we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.68

Consultation Question 94.

We provisionally propose that it should be possible to open a file, and begin the process for applying for a visa in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child, and the issue of a passport in the child's country of birth.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for registration of birth and a passport before the child is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

We provisionally propose that the current provision made for the grant of a visa outside of the Immigration Rules where the intended parents are not the legal parents of the child under nationality law should be brought within the Rules.

Do consultees agree?

NO

We provisionally propose that:

- (1) the grant of a visa should not be dependent on the child breaking links with the surrogate; or
- (2) that this condition should be clarified to ensure that it does not prevent the child having contact, and an on-going relationship, with the surrogate.

Do consultees agree?

YES

We invite consultees' views as to whether the current requirement for the grant of a visa outside the Rules that the intended parents must apply for a parental order within six months of the child's birth should be removed (regardless of whether the availability of the visa is brought within the Rules), if our provisional proposal to remove the time limit on applications for parental orders is accepted.

NO

The time limit should be retained but the court should be able to dispense with it in certain circumstances when this is in the best interests of the child.

Paragraph 16.69

Consultation Question 95.

We provisionally propose that it should be possible to open a file, and begin the process for applying for a EU Uniform Format Form in respect of a child born through an international surrogacy arrangement, before the child is born. The application will need to be completed after the birth of the child.

Do consultees agree?

NO

Allowing the 'intended parents' to start the application process for an EU Uniform Format Form for the child before she or he is born in international surrogacy arrangements appears to contradict the UN Special Rapporteur's recommendations* that are designed to protect against the selling and trafficking of children and the protection of the rights of the birth mother. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.76

Consultation Question 96.

We invite consultees to provide us with evidence of the experience they have had of applying for a EU Uniform Format Form for a child born through an international surrogacy arrangement. In particular we would be interested to hear how long the application took after the birth of the child, and any information consultees have of causes of delays in the process.

N/A

Paragraph 16.77

Consultation Question 97.

We provisionally propose that the UK Government should provide a single, comprehensive guide for intended parents explaining the nationality and immigration consequences of having a child through an international surrogacy arrangement.

Do consultees agree?

OTHER

I agree with such a guide, but would like to see it explaining the reasons why surrogacy is a violation of the human rights of women and children and all the other ways in which it is possible for people to enjoy children in their lives.

Paragraph 16.82

Consultation Question 98.

We provisionally propose that international surrogacy arrangements should not be eligible for the new pathway to parenthood.

Do consultees agree?

OTHER

I profoundly disagree with the proposals for the 'new pathway'.

Paragraph 16.93

Consultation Question 99.

We provisionally propose that:

the Secretary of State should have the power to provide that the intended parents of children born through international surrogacy arrangements, who are recognised as the legal parents of the child in the country of the child's birth, should also be recognised as the child's legal parents in the UK, without it being necessary for the intended parents to apply for a parental order, but

before exercising the power, the Secretary of State should be required to be satisfied that the domestic law and practice in the country in question provides protection against the exploitation of surrogates, and for the welfare of the child, that is at least equivalent to that provided in UK law.

Do consultees agree?

NO

I do not see how this proposal for such a blanket power would align with the UN Special Rapporteur's key recommendations* and the Hague Convention on the Protection of Children and Cooperation in respect of Intercountry Adoption of 1993. The latter requires the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent to giving up the child must be given AFTER the child's birth and that the transfer of 'parenthood' should be overseen by the courts or a competent authority on an individual case by case basis, with the best interests of the child being the paramount consideration. This is an important safeguard against the sale of children and for the protection of the birth mother and I believe it should apply equally to international surrogacy arrangements. I therefore strongly disagree with this proposal.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>

Paragraph 16.94

Consultation Question 100.

We invite consultees to tell us of their experience of surrogacy arrangements in the UK involving foreign intended parents.

N/A

We invite consultees' views as to whether:

101. any restriction is necessary on the removal of a child from the UK for the purpose of the child becoming the subject of a parental order, or its equivalent, in another jurisdiction; and

102. if such a restriction is necessary, there should be a process allowing foreign intended parents to remove the child from the jurisdiction of the UK for this purpose and with the approval of the court and, if so, what form should that process take.

Restrictions and checks MUST be in place to protect the child and the birth mother from trafficking and exploitation. The process should include the same checks as would be used in an international adoption.

Paragraph 16.120

Consultation Question 101.

We invite consultees' views as to whether the current application of the law on statutory paternity leave, and statutory paternity pay, to the situation of the surrogate's spouse, civil partner or partner requires reform.

I do not believe this needs changing.

Paragraph 17.18

Consultation Question 102.

We provisionally propose that provision for maternity allowance should be made in respect of intended parents, and that any such provision should be limited so that only one intended parent qualifies.

Do consultees agree?

NO

Paragraph 17.32

Consultation Question 103.

We invite consultees' views as to:

103. whether there is a need for reform in respect of the right of intended parents to take time off work before the birth of the child, whether for the purpose of induced lactation, ante-natal appointments or any other reason; and

104. if reform is needed, suggestions on reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.36

Consultation Question 104.

We invite consultees' views as to whether the duty of employers to provide suitable facilities for any person at work who is a pregnant woman or nursing mother to rest under Regulation 25 of the Workplace (Health, Safety and Welfare) Regulations 1992 is sufficient to include intended parents in a surrogacy arrangement.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children.

Paragraph 17.40

Consultation Question 105.

We invite consultees' views as to whether there are further issues in relation to employment rights and surrogacy arrangements and, if so, any suggestions for reform.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.43

Consultation Question 106.

We invite consultees' views as to whether they believe any reforms in relation to surrogacy and succession law are required.

I am opposed to any reform in this area because it would act to normalise surrogacy, which is a human rights abuse of both women and children

Paragraph 17.56

Consultation Question 107.

We invite consultees' views as to whether there are any issues in how surrogacy arrangements are dealt with by the health services, and whether there are reforms to law or practice that consultees would like to see in this area.

It is important that all health and care professionals are aware that surrogacy agreements are not legally binding and that 'intended parents' have no legal right to override the birth mother's wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour and childbirth. Even if she has previously agreed to them sharing decisions and being informed on these matters, she can withdraw her consent at any time for any or no reason. All professionals involved in her care are duty-bound to comply with her wishes.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

Surrogacy arrangements place additional and complicated pressures on healthcare staff and this could reduce the standard of impartial care given to birth mothers and new-borns – especially when the 'intended parents' are entitled, rich or of high status. This itself is a valid reason to be extremely cautious about making changes that will increase the numbers of surrogacy births.

It is generally recognised that egg donation and IVF pregnancies carry additional health risks. As most surrogacy pregnancies involve IVF, any increase in surrogacy is likely to lead to additional pressure on the NHS.

Adoption research suggests that the separation of the new-born and the birth mother has long-term negative effects on the well-being of both of them. This is likely to be the same for birth mothers and babies in surrogacy arrangements and so can be expected to place additional long-term pressures on the NHS and society as a whole. This has not been considered and there are no questions about this.

An increase in surrogacy will require an increase in egg donation, which is a risky procedure that can have a long-term negative impact on the woman's health, including premature death. Ethical issues abound. Young women might be coerced by financial pressures to donate eggs when this isn't in their best interests and there are worries about eugenics – where egg donors are selected on the basis of blonde hair, blue eyes and stereotypical measures of 'attractiveness' for example.

The law commissioners do not appear to have considered the likely impact of any of these issues. There is no question about people's thoughts about the NHS picking up the tab for the extra costs involved in surrogacy and whether this affects their opinions on surrogacy itself. There appears to have been no evaluation of the size of the additional costs to the NHS and society.

At a time when the NHS is under severe strain, and life changing therapies (for cancer, cystic fibrosis etc) are not funded due to financial constraints it is a slap in the face to provide money for prospective parents to indulge their parenting fantasies while denying patients access to drugs which are standard of care in other countries.

We invite consultees' views as to any additions or revisions that they would like to see made to the guidance published by the Department for Health and Social Care for England and Wales.

The guidance should be revised to clarify that surrogacy agreements are not legally binding and that the birth mother has the right to change her mind at any time, for any or no reason. Healthcare professionals must accept that her wishes are paramount and that the 'intended parents' have no legal right to override her wishes or decisions in regards to her lifestyle or medical and health care, including during pregnancy, labour, childbirth and the postpartum period.

All health and care professionals should also be aware that the birth mother may be being coerced to engage in the surrogacy arrangement by one or more persons, including her spouse or partner. If paid surrogacy is legalised, this will become more prevalent, but it can still be present in so-called altruistic surrogacy arrangements.

The guidance should make it clear that healthcare professionals should be even more alert than normal to the possibility that she is being coerced and to ensure that they can speak to her

alone, including during labour, and that if she changes her mind about who is present in consultations, and the labour ward/delivery suite, they must respect her wishes.

We invite consultees' views as to how midwifery practice may better accommodate surrogacy arrangements, in particular with regard to safeguarding issues.

It is important that midwifery practice always prioritises the wishes of the birth mother and the wellbeing of herself and the child.

Paragraph 17.76

Consultation Question 108.

We invite consultees' views as to whether there are any other legal issues in relation to surrogacy, not covered in this Consultation Paper, that merit examination.

It is of considerable concern that the law commissioners appear to have given no consideration to the significant risk that women will be coerced into agreeing to participate in surrogacy arrangements for someone else's benefit. This can be true in 'altruistic' surrogacy but is even more likely if substantial payments are involved.

It is well-known that women and girls are groomed and/or coerced into prostitution by partners and 'boyfriends' who act as their pimp and take all or much of their earnings. This is a major route by which many women enter prostitution and is a major factor in preventing their exit. There is no reason to expect that the same dynamics will not occur in relation to surrogacy if it is opened up and provides opportunities to make significant amounts of money.

If the law commissioners' proposals are enacted, there must therefore also be legislation that prohibits coercing a woman into a surrogacy arrangement. This should be a criminal offence and carry a hefty penalty – in recognition that it is a human rights violation and so that it acts as a deterrent. That such a law would be difficult to enforce just adds to the arguments for why paid surrogacy is a bad idea – and especially for women.

It would be far better to simply ban all surrogacy arrangements – or at the very least any payments beyond basic and essential expenses backed by receipts and overseen by a judge.

Paragraph 17.80

Consultation Question 109.

We invite consultees who are intended parents, live in the UK, and have entered into a surrogacy arrangement that led to the birth of a child to tell us:

105. when the child was born;
106. whether the arrangement was domestic or international and, if international, in which country the arrangement took place;
107. whether the arrangement led to the making of a parental order in the UK; and
108. whether they are a:
 1. opposite-sex couple;
 2. male same-sex couple;
 3. female same-sex couple;
 4. single woman; or
 5. single man.

N/A

Paragraph 18.2

Consultation Question 110.

We invite consultees who have experience of applying for a parental order in the UK to tell us:

109. whether the surrogacy arrangement was domestic or international;
110. whether they had legal advice before the making of the parental order;
111. whether they were represented by a lawyer in court; and
112. the cost of any legal advice or representation.

N/A

Paragraph 18.4

Consultation Question 111.

We invite consultees' views as to the impact (social, emotional, financial or otherwise) of the current law where the intended parents are not the legal parents from birth of the child born of the surrogacy arrangement.

Paragraph 18.6

Consultation Question 112.

We invite consultees to tell us what they have paid for, or to provide evidence about the cost of:

113. medical screening; and
114. implications counselling
(where possible separating out the cost of such screening, tests or implications counselling from any other costs involved with fertility treatment).

N/A

We invite legal consultees, who advise on surrogacy and parental order proceedings, to provide evidence of what they would charge:

115. to provide advice sufficient to meet the proposed requirement for independent legal advice discussed in Chapter 13; and
116. to draft, advise on and negotiate the written surrogacy agreement required for the new pathway.

N/A

Paragraph 18.8

Consultation Question 113.

We invite consultees to tell us of the impact of:

117. the current requirement of a genetic link; and
118. any removal of this requirement in cases of medical necessity:
 1. in the new pathway;
 2. in the parental order route for domestic surrogacy arrangements; or
 3. in both situations.

Paragraph 18.11

Consultation Question 114.

We invite consultees who consider that they might be able to fulfil the role of the independent professional discussed in Chapter 9 to tell us:

119. their profession; and
120. what they would charge to provide such a service.

N/A

Paragraph 18.13

Consultation Question 115.

We invite consultees who are intended parents to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

121. if particular proposals will increase accessibility, and why; and
122. if particular proposals will restrict accessibility, and why.

N/A

We invite consultees who are surrogates to give us their views on the impact of our proposals for reform on their ability to enter into surrogacy arrangements and, in particular:

123. if particular proposals will increase accessibility, and why; and
124. if particular proposals will restrict accessibility, and why.

N/A

Paragraph 18.15

Consultation Question 116.

We ask consultees who are intended parents to tell us:

- 125. whether the surrogacy arrangement was domestic or international;
- 126. what they spent, in total, on the surrogacy arrangement(s) that led to the birth of their child(ren), including the cost of fertility treatment, payments to the surrogate and payments to any surrogacy agency or organisation;
- 127. how they raised the funds for the surrogacy arrangement(s);
- 128. what they spent on any fertility treatment prior to entering into a surrogacy arrangement (where that treatment did not lead to the birth of a child); and
- 129. how they raised the funds for the fertility treatment.

N/A

Paragraph 18.18

Consultation Question 117.

We invite consultees' views as to the specific impact of our proposals in Northern Ireland.

Paragraph 18.20

Consultation Question 118.

We invite consultees' views as to any other impact that we have not specifically addressed in this chapter, or the preceding chapters, of this paper.

It seems that before the law commissioners designed this consultation, they had already decided that surrogacy is a positive thing and so legislation should enable it. This may be explained by a limited 'pre-consultation' mainly focusing on people who already had a vested interest in surrogacy – 'intended parents,' women who claim to have had a positive experience of surrogacy, and lawyers and other organisations who stand to make money from commercial surrogacy if it is given the green light.

It seems that the law commissioners did not consider women as a group to be key stakeholders in this endeavour. This is a major error, because just as all women are affected by the institution of prostitution, so all women will be affected by any opening up of commercial surrogacy in this country.

It could even be argued that one of the key drivers of commercial surrogacy is a desire by men to break the legal and cultural recognition of the unique bond between birth mother and child – and indeed the proposals to make the 'intended parents' the legal parents from the moment of birth are a major step in this direction, and are likely to have a significant impact down the line – potentially affecting the status of all women.

Paid surrogacy opens up enormous potential for abuse and risks spouses, partners and other family members coercing a woman into engaging in commercial surrogacy for their (and not her) financial benefit. This will be a potential risk for thousands of women, which appears to have been completely overlooked by the law commissioners.

UK and Scottish Law Commissions are obliged to comply with the Public Sector Equality Duty (PSED) when carrying out public functions, such as this consultation. There doesn't appear to be any evidence they have done so, because they have not provided their equality considerations and impact assessments. As surrogacy has a very different impact on women and children than on adult males, we believe the law commissioners are in breach of equality legislation.

The Equality and Human Rights Commission describes the obligations under the PSED to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

There are many ways in which opening up surrogacy in the UK is likely to worsen women's position relative to men's, and the relationship between the sexes. Any loosening of the laws around surrogacy could therefore be considered discriminatory. Surrogacy is also likely to have

an impact on the relations between the different generations. Imagine the rage that young people may feel when they discover that their 'parents' not only bought them but took advantage of their birth mothers.

It is of major concern that the law commissioners' ethical arguments hinge on ideas that are not based on any recognised human rights instruments – such as the idea that 'procreative liberty' confers some kind of human right to surrogacy and the idea that a woman has a human right to be a 'surrogate.' These arguments do not hold up to scrutiny and have been clearly rejected by the UN Special Rapporteur.*

It is shocking that the proposals for the 'new pathway' violate many of the recommendations of the UN Special Rapporteur that are designed to guard against the sale of children and the exploitation of birth mothers, including:

- The birth mother must be accorded the status of legal mother at birth, and must be under no contractual or legal obligation to participate in the legal or physical transfer of the child.
- All payments to the birth mother must be made before the legal and physical transfer of the child and must be non-reimbursable – even if she decides not to relinquish the child.
- The birth mother's choice to transfer the child "must be a gratuitous act, based on her own post-birth intentions, rather than on any legal or contractual obligation."
- Pre-conception checks, while encouraged, cannot take the place of appropriate welfare checks after the birth of the child.
- Decisions about parentage and parental responsibility must be made by a court or other competent authority on an individual basis after the birth with the best interests of the child being paramount.

The consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and do not ask the important high-level questions – such as whether you think surrogacy can ever be ethical, etc.

For all these reasons, the law commissioners should go back to the drawing board and start again from the position of women's and children's human rights. If it is found that there is no way to liberalise surrogacy law that is compliant with obligations under international treaties such as CEDAW and the UNCRC and its first optional protocol, then the law must not be liberalised.

* <https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx>