Response ID ANON-2V7F-Y8UX-3

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 10:18:49

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:

not applicable

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:

not applicable

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

Crucial - there is already too many cases of deceit and exploitation. We have a moral duty to ensure the UK side is above reproach.

Please provide your views below:

See above

9 Consultation Question 2:

Please provide your views below:

I would like to see them all allocated to judges - circuit in case of domestic.

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:

This simply wouldn't be true; falsehoods should not be knowingly written onto birth certificates. Children have the right to know who their birth mother is. We should not change this. Mothers are not just living wombs to be hired out. Surrogates should retain the right to change their mind.

15 Consultation Question 8:

Yes

Please provide your views below:

There should be absolute transparency and accountability at every level

Another period

Please provide your views below:

Information should always be open - no time limit

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:

All children have the right to know their genetic and familial history.

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:

Agree - surrogates need the chance to reflect before handing over a child that is half theirs

19 Consultation Question 12:

Yes

Please provide your views below:

20 Consultation Question 13:

Yes

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:

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:

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:

Not Answered

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:

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:

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?

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?

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:

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:

This should not be opened up to the market in this way.

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 remove the birth mother from the 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?

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:

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:

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?

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:

Parents who are aged over 60 when a child is born will be unlikely to be around long enough to give that child a proper start in life.

Please provide your views below:

60

Not Answered

Please provide your views below:

73 Consultation Question 65:

No

Please provide your views below:

No

Please provide your views below:

I think there should be a lower limit of 25. We need to give young people the chance to find their feet and start in life and have families of their own before having to make decisions of such extraordinary ethical complexity.

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:

Absolutely. You don't fully understand pregnancy and birth until you have been through it. You need that experience in order to make a rational decision. Its also important because if surrogacy cost a woman her womb then she would not be able to have children of her own for herself.

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:

Absolutely not - women are not baby-making machines. Before contraception was widely available, women died due to going through too many pregnancies. It should not become a job for low-paid, low-skilled women to be forced into through lack of choice.

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:

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:

Of course they should have to. This should be mandated. The surrogate may well have family of her own

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:

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?

Yes

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 provude 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?

(Choose one response)

Social worker

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

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 f 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

Paragraph 18.22

Response ID ANON-2V7F-Y8UZ-5

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 11:21:13

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:

The Rainbow Project

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?

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 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:

We agree that on the birth of the child the intended parents should be the legal parents, this provides clarity for not only the healthcare providers but also the intended parents, balanced with the surrogate's right to object.

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:

Yes

Please provide your views below:

We agree. This proposal is proportionate and allows for flexibility across UK nations.

19 Consultation Question 12:

Yes

Please provide your views below:

We agree, this provides an alternative pathway when required.

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:

Other

Please provide your views below:

This may present some problems for the child for example in relation to passport applications. There should be a pathway for the spouse or civil partner to request to be a legal parent where the surrogate exercises their right to object , but this should not be automatic.

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:

Yes

Please provide your views below:

We agree, this should provide consitency for the child until a long term decision is made.

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:

This may be useful for healthcare decisions while in hospital.

36 Consultation Question 29:

Please provide your views below:

It may be useful to limit parental responsibility that can be exercised by the party not caring for the 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?

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:

t would be better for surrogacy arrangments to be regulated to protect all parties including the child.

Please provide your views below:

40 Consultation Question 33:

Yes

Please provide your views below:

We agree that there should be regulated surrogacy organisations.

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:

We agree, however it would be better if they were public health organisations with government funding.

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:

Where a surrogate is known to the intended parents matching will not be required. There should be facilitation in these circumstances.

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?

Yes

Please provide your views below:

We agree, as the proposal would restrict advertising to lawful surrogacy arrangments action can be taken on any advertisments falling outside this.

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?

Not Answered

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:

We agree

55 Consultation Question 47:

Yes

Please provide your views below:

We agree.

Yes

Please provide your views below:

We agree.

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:

We agree.

57 Consultation Question 49:

Yes

Please provide your views below:

We agree. That a child should be able to access information from 16/18, or when 1 and 2 are both met.

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:

We agree, where both parties people wish to.

Please provide your views below:

60 Consultation Question 52:

Please provide your views below:

We agree to 1 and 2.

Please provide your views below:

We agree to 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:

Intended parents should be included on 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:

63 Consultation Question 55:

Yes

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:

Double donation should be permitted whether by medical necessity or not.

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:

We disagree. Surrogacy is a path to parenthood for same sex couples who may not have any stand alone fertility issues.

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:

Yes

Please provide your views below:

We agree, this would be useful for all parties at the beginning of the process.

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:

We agree, this is in the best interest of all parties.

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:

We disagree, the surrogate should determine whether they are suitable to be a surrogate following counselling if required.

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:

We agree with 1, or 2. Surrogates should be required to produce receipts where costs are within those allowed and agreed.

81 Consultation Question 73:

Please provide your views below:

We agree that intended parents should be able to pay essential costs.
Essential costs should include at least healthcare and loss of income.

82 Consultation Question 74:

Please provide your views below:

We agree that the intended parents should be able to pay additional costs. These could include domestic help and childcare where the surrogate is unabkle to carry out these tasks due to pregnancy. This should be by agreement not required.

83 Consultation Question 75:

Please provide your views below:

We agree, these costs could include counselling and legal 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:

We agree

85 Consultation Question 77:

Please provide your views below:

We agree to 1 and 2

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

Please provide your views below:

We agree with the first 3 points.
A maximum amount should be set by the regulator to protect all parties.

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:

We agree.

89 Consultation Question 81:

Please provide your views below:

We agree with 1.
Modest and reasonable are not certain enough terms and open to interpretation, there should be a maximum value set by the regulator.

90 Consultation Question 82:

Not Answered

Please provide your views below:

Rather than payment expanded permissible costs should be allowed.

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:

There should be no difference between pathways.

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:

Childcare for exisiting children where pregnancy impacts the surrogates capability.

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:

We agree, surrogates should be protected in relation to both financial terms and bodily autonomy.

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?

Yes

Please provide your views below:

We agree, however note this could raise some legal arguments about personhood.

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:

We agree with these proposals.

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?

Yes

Please provide your views below:

We agree, but note the potential legal arguments around personhood.

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:

We agree, this would be usful to intended parents.

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:

Yes

Please provide your views below:

We agree, this may be necessary for the best interests of the health of the child

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 provude 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:

Your Response to Q46 There are currently no guidelines for healthcare professionals in Northern Ireland. This must be addressed. While not the responsibility of this consulting body, with the absence of a devolved government healthcare professionals have been left in a vaccum with the guidelines for England and Wales to use as reference only.
The follow up care for the surrogate must be accommodated as well as for the child. There may need to be an update to record keeping and systems to allow for both to be properly cared for.
Midwives have asked Here NI organisation for guidance as they had not received any from the Department of Health and had an incoming paitent who was a surrogate, this is not an ideal situation. Midwives raised concerns around who was allowed to attend the birth, who could make decisions, who could take the baby from the hospital, and around breastfeeding.
The new pathway may go some way to provide clarity on these issues, but not for births to surrogagtes in Northern Ireland.

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:

Short Form Questionnaire: Law Commissions' Surrogacy Consultation



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? [redacted]

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

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

What is your email address?
[redacted]

What is your telephone number?
[redacted]

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	**As someone who has a daughter through a surrogacy arrangement that was set up over 22 years (my daughter is 21) through COTS that has been highly successful I am apprehensive about providing a legal framework that is so rigid that it deters potential surrogates from coming forward. I appreciate that not all surrogacy journeys are as successful as our own but part of the success has been through building trust and confidence by personal interactions rather than via predetermined legal hoops which all involved have to pass through. It is stressful enough to enter into any 'assisted conception' arrangement, for both intended parents who have probably been on the**

	journey for many years and surrogates who, perhaps, may have somewhat mixed experience of formal procedures. **The new pathway to legal parenthood is fraught with challenges that makes me deeply uneasy. It looks like something established by lawyers to protect against those surrogacy arrangements that have gone awry when, in truth, the majority of them do not. It does not have the feel of a pragmatic arrangement mediated through experience of the process and may lead to many intended couples and surrogates choosing to avoid the formalities of a constrained UK system and opting for a more relaxed process elsewhere. It may be attractive to those intended couples who would like to view the process as a type of 'medical intervention' rather than an arrangement between, often fragile human beings (the intended parents) who just want to work with truely altruistic individuals (the surrogate and their partners) who want to help.**
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	**Not sure that I see a problem with the current arrangement through a parental order where both parties have the time and space to decide how they want to progress the arrangement and formalise the outcome. A child is not a piece of merchandise where ownership can be decided on the basis of genetics or a legal framework with amoney back guarantee.**
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	**Retain the parental order route.**

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	**Agreed but this inevitably takes you down the route of DNA identification, in the case of host surrogacy' to ensure that the spouse is not the biological father. This is fraught with complications and should be avoided.**
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	**This is OK.**
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	**Agreed.**
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	**This is a legal issue that you now are caught up in by imposing a legal framework. This is potentially a deleterious step and should be avoided.**
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	**No. The proposed pathway needs to be re-evaluated by individuals who have direct experience of surrogacy not be those who see it as an issue that requires a legal framework to wrapped around it.**
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	**No**
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	**The consequence of this is that you will reduce the number of individuals who wish to embark on surrogacy. It is not a journey that should should start with the signing of a legal agreement.**
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	**Another potential minefield! I recognise that there is a need for a financial 'agreement' but it has to be entered into extremely carfully and with accommodation on both sides. I am more in favour of the intending couples to provide support to the surrogate so that they can choose to give up their work at some stage in the pregacy and also to enable them to recover after birth has taken place.**
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	**agreed**
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	**Click or tap here to enter text.**
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	**This is understandable and I suspect is the norm but not sure why it would be made a requirement particularly in view of the legal framework that is being proposed.**
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	**1 and 2 seem to contradictory.**
Q18	Consultation Question 35. We provisionally propose that regulated surrogacy organisations should be non-profit making bodies.

	Do consultees agree?
Your Response to Q18	**They should have charitable status.**
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	**Agreed**
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	**Agreed**
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	**Agreed**
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	**This will work for those surrogacy arrangements that occur through IVF clinics but again brings DNA testing of surrogates into the equation for host surrogacy arrangements.**
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	**The danger in this is that pandora's box may be opened. We are moving down a path of making surrogacy a mechanical process involving the mixing of DNA and the identification of genetic outcomes.This should be avoided. We need to remember that surrogates and intended couples are people and that the child who is born out of such an arragments has both elements that originate from nature and nurture.**
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	**See above.**
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	**If outside the pathway why impose the pathway rules and regulations?**

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	**Based on an allowance previously discussed. The idea of the surrogate having to produce receipts is abhorrent!**
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	**Click or tap here to enter text.**
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	**Additionalis fine. Leave it to the parties to work out.**
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	**Click or tap here to enter text.**
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	**This would be the preferred option**
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	**Agreed.**
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	**Click or tap here to enter text.**
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	**Understand the issue here but we are turning this whole process from a personal relationship into a legal transaction. This is absolutely the wrong direction of travel!**
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	**What a bizarre question! Is this before the birth or after the birth? Does it include birthday presents? There are important issues in this document and this question is in danger of trivialising the whole consultation process.**
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	**I have no experience of international surrogacy and do not feel that I can useful contribute to this part of the consultation exercise.**
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	**Click or tap here to enter text.**
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	**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**.

Response ID ANON-2V7F-Y8Z2-2

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 11:24:57

About you

1 What is your name?

Name:
NGA Law and Brilliant Beginnings

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:

NGA Law - specialist fertility law firm
Brilliant Beginnings - non-profit UK surrogacy agency

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?

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 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

We think international surrogacy cases should remain heard by High Court judges who have the expertise to deal with them properly and efficiently:

• The High Court judges who hear international surrogacy cases have developed significant experience, and deal with cases efficiently. We have seen a few (3 or 4) international surrogacy cases mistakenly allocated to circuit judges and our experience has been consistently very poor:
o In one involving an Indian surrogacy, the court made the wrong order (a parental responsibility order instead of a parental order) and this was not identified by self-representing applicants until they sought legal advice several years later.
o In a more recent US surrogacy case involving a single father (which had been properly issued within six months of s54A coming into effect) the applicant was wrongly told he was out of time and a hearing before a circuit judge was listed to consider whether his application could proceed at all.

• Many applicants for parental orders are unrepresented and mistakes of this kind cause unnecessary delay and may even have lifelong implications for the child.

• Significant training will be needed if the current allocation is changed. Given the relatively small number of international surrogacy cases, this does not seem justified.

• If the Secretary of State exercises the proposed power to recognise some jurisdictions there will be fewer parental orders heard in international

surrogacy cases, and those that remain will be those which most need careful judicial oversight.

• We have also made additional proposals in this response as to:
o how the current parental order process could be re-designed to streamline it (please see our response to Question 108); and
o how some international surrogacy cases could be brought within the proposed pathway (see our response to Question 98) .
If these proposals are adopted, this will further reduce the burden on High Court judges.

Please provide your views below:

Please see (1) above.

9 Consultation Question 2:

Please provide your views below:

We think that domestic surrogacy cases in which there is a dispute should continue to be heard by High Court judges, and that domestic surrogacy cases in which there is no dispute should be heard by sufficiently-qualified judges (which at the moment we think only includes High Court judges):

• The current allocation rules say that domestic surrogacy cases in which there is an issue over consent should be heard by circuit judges, and those in which there is no dispute should be heard by lay magistrates. However, this is not a true reflection of what happens in practice.

• Disputed cases are always heard by High Court judges (this has been the case for every surrogacy case we have been involved in, and every reported case of which we are aware). These are complex cases appropriate to be heard by High Court judges, who have significant experience and expertise. We think this should be properly reflected in the allocation rules to ensure cases are transferred efficiently without unnecessary preliminary hearings to consider allocation.

• Undisputed domestic parental order applications are currently heard by lay magistrates. The Central Family Court in London has good experience and manages cases efficiently (with a single final hearing after directions are issued automatically in writing) and this typically takes 4-6 months with legal representation or 6-9 months without. Elsewhere there are usually two court hearings in the magistrates' court, and experience is variable, but applications often take longer (6-15 months). The advantage of magistrate allocation is that the process is largely administrative. However, the disadvantage is that the process is lengthy and there is very little legal scrutiny (something which has created the confusion and flexibility over expenses and led to lack of interrogation of other criteria such as domicile - see Re G (surrogacy: foreign domicile) [2007]).

• Given that parental orders will only apply to UK surrogacy cases going forward which fall outside the pathway, and given the intention for there to be meaningful judicial oversight of such cases, we think they should be heard by more senior judges. For the reasons set out in our response to Question 1 (concerning expertise, efficiency and avoiding delay) we think that High Court judges are currently the only judges with the experience and expertise to do this.

• We also think that the current parental order process should be significantly re-designed to update and simplify it, which will reduce the burden on the court (please see our response to Question 108).

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:

See our response to Questions 1 and 2.

11 Consultation Question 4:

Other

Please provide your views below:

If there is a first directions hearing and the intended parents do not already have parental responsibility, then we agree that the court should be required to consider granting it on an interim basis. This reflects what the court routinely does in practice in any event (certainly in the High Court).
However, we also think that the limbo period in which intended parents are caring for their child without parental responsibility/legal parenthood should be minimised, to ensure parents and children are treated no differently from other families as far as possible:
• We therefore agree with the Law Commission's provisional proposal that intended parents acquire parental responsibility automatically from birth where they propose to apply for a parental order (see our response to Question 26).

• We do not think there should routinely be a directions hearing in parental order applications, and that cases should be fully resolved in one hearing wherever possible so that interim orders are not needed (see our response to Question 108).

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:

We think that the current parental order process should be significantly re-designed to update and simplify it (please see our response to Question 108). In line with this, we do not think that the default rule should be a full CAFCASS report. However, where there is one we agree that it (as well as any lighter touch safeguarding report) should be disclosed to the applicants automatically.

We have been involved in several hearings where the court has expressed its frustration to a CAFCASS officer for not disclosing their report, even though this is what the rules say. A change to the rules is therefore sensible.

13 Consultation Question 6:

Please provide your views below:

No response – we do not practice in Scotland.

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

14 Consultation Question 7:

Yes

Please provide your views below:

We agree that intended parents should be recognised as the legal parents of their child from birth:

• This reflects what a surrogacy arrangement is – a shared intention to conceive a child who will be the child of the parents and not the surrogate.

• It will bring UK surrogacy law better in line with other forms of assisted reproduction, such as egg and sperm donation, where the intended parents are recognised as the parents from birth.

• It will create greater confidence in UK surrogacy as a legitimate and legally-recognised process, which we hope will both encourage parents to stay in the UK and encourage more UK surrogates to come forward.

• It is in the best interests of the child. Currently children born through surrogacy are born into a legal limbo. During the 6-12 month period it takes to transfer legal responsibility, real difficulties arise, including around decision-making in relation to hospital post-natal care (where we have seen parents ignored or excluded), unnecessary referrals to social services (with parents and surrogates made to feel they are doing something wrong in allowing the parents to care for their own child). The child is vulnerable from insecure parentage having, for example, no automatic inheritance rights and no rights to financial maintenance if a parent leaves. Perhaps even more importantly, the limbo period creates significant emotional vulnerability for all involved which may impact on bonding and attachment.

• Of the Brilliant Beginnings surrogates and intended parents we consulted, all were strongly supportive of legal parenthood from birth:

o One father (who had an 8 month old son and was awaiting his parental order) said that they felt that this was 'hanging over them', and said their surrogate and her spouse were becoming more and more anxious about the risk of them being asked to make decisions in respect of a child who was not theirs.
o Another parent said in retrospect: "It felt strange to do this after the fact. You are correcting something that is factually wrong, and are in the hands of social services and could be bumped, so there is anxiety and feeling that you are not being trusted".
o Another parent discussed having to hold back from applying for a passport until the parental order was granted (because they didn't want to ask their surrogate to apply), which meant that their child couldn't be taken to meet her grandparents who lived overseas.
o One two-time surrogate said: "Surrogates do not want to be the mother and do not want to make decisions after the baby is born".
o Another surrogate described how her husband was initially very reluctant because of legal parenthood. She said "He just couldn't understand how it all worked and felt very protective" and said that as a result they nearly didn't do it. She thought this would have been a much easier decision if the birth certificate could be agreed in advance.

We agree with the proposed pre-pregnancy steps:

• The proposed requirements are sensible minimum safeguards to protect all parties going into a surrogacy arrangement and the child to be conceived. They provide a framework to mitigate against unnecessary complications.

• They are broadly in line with existing customary practice around UK surrogacy, and so will not add significantly to the financial or practical burden of intended parents or surrogates.

We do not agree that the surrogate should have a right to object to legal parenthood (see our response to Question 11).

15 Consultation Question 8:

Other

Please provide your views below:

We think this question conflates two separate issues: firstly, who can confirm that a surrogacy arrangement complies with the pathway requirements, and secondly what responsibilities regulated surrogacy organisations and licensed clinics should have for retaining records.

We think that only licensed surrogacy organisations should be able to confirm that the requirements of the pathway have been met for the purposes of legal parenthood:

• We see the role of a licensed surrogacy organisation as being to pull together the threads of safeguarding steps provided by other professionals (legal advice, implications counselling, medical screening) and in addition to carry out its own unique role in respect of ensuring eligibility, carrying out background checks, assessing the welfare of the child and ensuring that the written agreement covers all important issues. We do not think that fertility clinics automatically have the skills and experience to carry out this function properly in surrogacy cases.

• We think there should be a separate HFEA licence for surrogacy and that, if fertility clinics want to carry out the role of confirming that a surrogacy arrangement meets the pathway requirements, they should hold an HFEA surrogacy licence to enable them to do so, and so be subject to the same regulatory control as surrogacy organisations.

• We are mindful of the extensive body of case law concerning the failure of fertility clinics to properly oversee the establishment of parenthood in sperm donation cases (started with the 'Alphabet' case heard by Munby P in 2015). These difficulties have arisen because the oversight of legal parenthood was left to clinical professionals under HFEA licence who did not have the skills and experience to carry out this role properly. However, in sperm donation cases legal parenthood is established by completing and signing two consent forms. In a surrogacy case, the process for establishing legal parenthood will involve many different steps. Given that complexity of this, we do not think licensed clinics should be given this responsibility unless willing to comply with a surrogacy licence.

• In consulting Brilliant Beginnings parents and surrogates about this, there was a very low level of confidence in fertility clinics' understanding and management of surrogacy generally. One parent said: "The whole process is complex and clinics are just not set up to deal with it."

In respect of record keeping, we agree that regulated surrogacy organisations (in respect of the surrogacy aspects) and licensed clinics (in respect of treatment and donation) should be under a duty to keep a record of surrogacy arrangements they have facilitated, but only until the birth is registered. After this, we believe all significant information should be held on the HFEA register of information and the national surrogacy register:

• It is better for surrogate-born people to be able to access information about their genetic and gestational heritage from a central public register. This protects their rights, ensures that information is held consistently and in one place, and means that they do not necessarily need to know the organisation or clinic involved in their conception. This is in line with the existing system for donor-conceived people accessing information about their donors, which is done via the HFEA Register of Information rather than through records held by individual clinics.

• It is not practical to require private surrogacy organisations/fertility clinics to maintain records for 100 years. It is also an onerous responsibility for non-profit organisations, some of which are run with a very limited budget, and there are no guarantees the organisations will even exist in 100 years' time.

• A central register will enable sensitive and consistent procedures for managing requests to access information, for example through the provision of counselling.

Another period

Please provide your views below:

See above (15).

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:

We do not think this is necessary and do not really understand the reason for the question since it doesn't deal with any real issue we have ever seen:

• The only donated gametes used in a traditional surrogacy arrangement (since the surrogate is using her own eggs) are sperm. We have never seen a traditional surrogacy case where the intended father's sperm was not used, but even if donated sperm was used sperm donors at UK clinics are always identifiable and anonymous donor sperm cannot be imported to the UK without a breach of the Human Fertilisation and Embryology Act by the recipient. We therefore do not see how it would even be possible to use anonymously-donated sperm in traditional surrogacy, unless it involved treatment with donor sperm at a clinic outside the UK.

• We do see anonymously-donated gametes (usually eggs rather than sperm) being used in gestational surrogacy cases where the IVF treatment takes place overseas as part of an international surrogacy arrangement. In some countries (the Ukraine, Georgia, India) anonymous egg donors are the only option, in other countries (the USA, Canada) intended parents have the option to choose an anonymous, known or semi-known donor. We also see the use of anonymously-donated gametes in some domestic surrogacy cases, where a UK surrogate is taken overseas for IVF/donor egg treatment, usually to somewhere in Europe (Cyprus, Spain, Czech Republic). This may be because the intended parents have embryos left over from previous treatment and/or because they are seeking cheaper IVF/egg donation.

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 response to Question 9.

18 Consultation Question 11:

No

Please provide your views below:

We do not agree that the surrogate should have a post-birth right to object to legal parenthood in the new pathway:

• We have given this proposal significant thought in view of the Law Commission's apparent acceptance that surrogates need a post-birth right to decide whether to surrender their birth status so as not to breach their rights, as well as our confidence that any objection would very rarely – and likely even never - be exercised in practice.

• However, we had strong feedback from every single Brilliant Beginnings surrogate we spoke to that surrogates should not be given a right to object in the new pathway, as this is not something that they have asked for or want. We support them, and feel that this goes to the core of what a surrogacy arrangement is: the conception of a child on the basis of a shared intention that the intended parents will be the child's legal parents. Fundamentally, we do not believe that a woman who has given informed consent to carrying a child for someone else is ever that child's legal mother. We think the current proposals perpetuate the misunderstanding about the nature of surrogacy, and about the lack of capacity of women to confidently commit to carrying someone else's child.

• To give a flavour of the strength of feedback from our surrogates on this, here are some of their comments (and please note that this was not balanced with a single conflicting view):
o "No. I have made my decision and I made them at the beginning, so no. I am actually quite insulted by this."
o "I have exercised a right from the beginning to be a surrogate so I don't need to be given a right that I haven't asked for."
o "This is about re-educating people about what surrogacy is – it is not adoption."
o "If we apply the pre birth stuff, why would you need this?".
o "The countless months of IVF, the months developing a close and personal bond with IPs and to have their health and the child's health taken care of by those IPs, only for the surrogate to say 'I want to keep the child' I think is harsh. Yes everyone has the freedom of choice and every woman has that choice, however I don't believe anyone should enter a surrogacy with the slightest slither of doubt in their mind that they will allow the IPs to become the legal parents of that child."
o "No I don't think that surrogates should be able to change their minds and keep the baby. They have entered into a surrogacy agreement knowing from the beginning that they are carrying a child for another couple."
o Our surrogates were also, when pressed, collectively unable to think of any possible circumstances in which they thought it would be justified for a surrogate to change her mind and claim legal motherhood.

• Since the pre-conception steps in the new pathway are designed to protect surrogates and ensure informed consent (through counselling, screening and independent legal advice), we think that they should create a legally binding decision for the surrogate in respect of who the child's legal parents are. A surrogate should be treated similarly to an egg donor who, despite remaining a biological parent, has no right following conception to change her mind and claim she is the legal mother.

• Cases in which a UK surrogate seeks to keep the baby (or objects to parenthood without wishing to care for the baby) are very rare, contrary to popular misconception. Having dealt with over 1,000 surrogacy cases, we have only been involved in a tiny number of disputed UK surrogacy cases (H v S (2015) and 2 others, one of which was resolved and one which is currently in process). In H v S (2015) the court found that the surrogate had actively misled the parents about her intentions from the outset, rather than changing her mind. The other two cases we have been involved in involved independent surrogacies in which sensible pre-conception steps were not followed and there was a breakdown in communication. There is, to the best of our knowledge, not a single reported or unreported case in which a UK surrogate has simply changed her mind having gone through a process equivalent to the proposed pathway pre-conception. We therefore do not think there is a real need to give surrogates a right to object.

• In respect of international law and women's rights issues we think it is also important, conceptually, to separate the concept of legal parenthood from the wider concept of the 'rights' of surrogates in relation to the child. A surrogate can (like anyone else), under English law, apply to the family court for a child arrangements order which gives her a right contact with the child, or even to have the child live with her, and the family court would consider what was in the child's best interests. Removing her power to object to legal parenthood therefore does not remove her 'rights' in relation to the child. None of the proposals made by the Law Commission would prevent her from bringing an application to the family court for contact or even to have the child live with her. In an extreme case (perhaps most likely where the parents had abandoned the child or the child had been removed from their care for child protection reasons), a surrogate could even apply to adopt a child of whom she was not a legal parent. These remedies are sufficient to safeguard surrogates' rights, although we think that, to recognise a surrogate's special status a surrogate should be explicitly included in the categories of people who can apply for a child arrangements order without the court's leave.

• From the intended parents' perspective, the current proposal does not give enough certainty. Fundamentally, it does not change the current legal framework. One intended parent we consulted questioned the point of changing the law at all if the surrogate still had a right to change her mind. Even if a surrogate would be incredibly unlikely to exercise her right to object, it is important to understand the enormous impact the perceived risk has on parents' decision-making. We know, both from our own experience and from the research we carried out with Cambridge University (V Jadva, H Prosser and N Gamble, Cross-border and domestic surrogacy in the UK context: an exploration of practical and legal decision-making, Human Fertility, December 2018), that the desire for legal certainty is one of the primary factors driving intended parents overseas. If law reform hopes to encourage parents to

enter into safe regulated UK surrogacy arrangements rather than going abroad, retaining the surrogate's post-birth veto will not achieve that.

If the Law Commission disagrees and the surrogate is given a right to object to legal parenthood, we think that – to avoid a delay in birth registration - it should be possible to register the birth with the surrogate's positive consent via her attending the birth registration or providing a statutory declaration:

• We believe that surrogates can make an informed decision to give consent without needing a 35 day cooling off period.

• This will enable the child's birth to be registered as soon as possible in cases where there is no dispute. If the current proposal is adopted, the intended parents will, in every surrogacy case, be forced to wait 35 days (in England) before they can register their child's birth. The current proposal will also create a very short window of time during which the intended parents must register the birth (only one week), which seems impractical.

• The current proposal effectively retains the 'limbo period', albeit over a shorter period. Intended parents will remain anxious about the risk of the surrogate changing her mind during that 35 day period (something which may work to undermine their longer-term relationship). Professionals will remain confused about who can make decisions for the child, during the potentially most critical post-natal period. One of the intended parents we consulted commented that this period of uncertainty would impact "at their most vulnerable time". It would be better to enable this unsatisfactory period of time to be brought to an end as quickly as possible.

19 Consultation Question 12:

No

Please provide your views below:

We do not agree. As set out in our response to Question 11, we do not think the surrogate should have a right to object post-birth at all. However, if the Law Commission disagrees, we think the right to object should only operate to trigger a court process rather than to make her the legal mother:

• The intended parents should be the legal parents on the basis of having complied with the pathway steps, and should be registered as such following the birth.

• If the surrogate does not consent to the birth registration this should trigger an application for a parental order, through which the family court can decide whether to:
o make a confirmatory parental order in favour of the intended parents; or
o decline a confirmatory parental order, in which case the surrogate will become the legal mother and the birth certificate will be re issued.

• The court can (separately from the question of legal parenthood, although likely within the same court process) also consider who the child should live with, spend time with, and who should have parental responsibility under the child arrangements order framework. As set out in our response to Question 11, we think surrogates should be entitled to apply for a child arrangements order without leave.

• Although not as good a solution as removing the surrogate's right to object entirely, we think this would be a better balancing of the rights of all involved than the current proposal. In particular, we think this would give greater certainty to intended parents since only the court, and not the surrogate, would be able to remove their legal parenthood if they have properly followed the pathway steps.

20 Consultation Question 13:

No

Please provide your views below:

We do not agree, since we do not think the surrogate should have a right to object post-birth. However, if the Law Commission disagrees and concludes the surrogate should have a right to object, we think that it is simpler and more practical to require the surrogate to positively consent to the birth registration, as set out in our response to Question 12. Question 13 is then irrelevant.

If the surrogate is unable to positively consent due to incapacity, the case should be treated in the same way as a case where she objects: the intended parents should be registered on the birth certificate but the surrogate's lack of consent should trigger a court process for a confirmatory parental order, as set out in Question 12. If the surrogate later recovers capacity, she can ask the court to make a parental order by consent, and so bring the court process to an end.

21 Consultation Question 14:

Yes

Please provide your views below:

We agree. A light-touch pre conception welfare assessment is appropriate and sufficient, avoids discrimination and will be more effective than the current system in safeguarding the welfare of the child. We also think that, where a parental order is required, the welfare assessment should be lighter touch than is currently the case (see our response to Question 108):

• Surrogacy is a form of assisted reproduction, and the welfare assessment should not be modelled on adoption where a child born into one family is placed with another.

• There is no advance welfare assessment carried out on parents who conceive children naturally and a light-touch welfare of the child assessment in respect of parents who conceive at UK licensed fertility clinics. Over the years, this assessment has (appropriately) become increasingly more light-touch, recognising that fertility clinicians have limited ability to assess prospective parenting capacity and can therefore only look at safety and risk, and recognising that intended parents who suffer infertility should not be discriminated against.

• Parents who need the help of a surrogate either suffer from infertility or medical conditions or are in a family structure which makes it impossible for them to carry a pregnancy. There is no evidence that they are more likely to pose a risk than any other parents who choose to conceive children. There is therefore no justification for a higher level of scrutiny to be imposed in respect of their parenting capacity. If issues arise after the birth, parents through surrogacy will – like all other parents – be subject to the usual child protection systems.

• Post-birth welfare assessments are ineffective in surrogacy cases. Of the 1000+ surrogacy cases we have been involved in, only one has raised a significant welfare question concerning the suitability of the parents. In that case, the judge made a parental order and said that he would have done so even if he thought the welfare issues were so significant that they should trigger public law proceedings since the parents (rather than the surrogate and her husband) should have the right to be involved in those proceedings. This demonstrates how little impact the full welfare assessments actually have on the outcome of parental order applications, given that welfare is assessed through the rear-view mirror.

• Contrary to some views expressed about the importance of post-birth welfare assessments, replacing a post-birth welfare assessment with a pre-conception assessment will therefore not just have no detrimental impact on children; it will actually be more effective since it may prevent the surrogacy from ever taking place. However, it is also appropriate for this assessment to be as light touch as possible – ruling out only the most obvious and seriously unsuitable intended parents – given the risk of discrimination.

We have the following thoughts about how this should work in practice:

• We think the regulatory guidance should be modelled on the existing HFEA Code of Practice but should be particular to surrogacy. It should encompass both the intended parents and the surrogate/her partner if it takes place at a pre-conception stage, and not just the intended parents (as is currently the case in the post-birth assessment).

• Regulated surrogacy organisations should be given authority, if they wish, to conduct relevant enquiries (with the parties' consent), including criminal records checks and searches of local authorities to check if the parties are known to social services. At Brilliant Beginnings we have had a number of surrogates who have disclosed dealings with social services and we have not been permitted to obtain any information to verify whether that raises any concerns for the welfare of the child. We would like to be able to access this information ourselves (as CAFCASS currently does) in respect of both surrogate and intended parents, and think that the licensing system can be used to enable that.

22 Consultation Question 15:

No

Please provide your views below:

We do not think that a surrogate's spouse should be a legal parent in any circumstances. If the Law Commission adopts our suggestion that there is no right to object in the pathway and for a parental order to be made pre-birth, the intended parents will be the legal parents from birth in any event (please see our responses to Questions 11-13 and 108). However, even if the surrogate is the legal mother at birth, we do not think her spouse should be the other legal parent:

• The rule which makes a spouse a legal parent in section 35/42 HFEA 2008 is designed to benefit fathers (and second female parents) whose partners conceive through sperm donation; it was never designed for surrogacy cases and is illogical and ill-fitting. We cannot see any case for retaining it. A surrogate's spouse is not a biological parent and has no intention to act as a parent. There is no demand from surrogates' spouses to retain it – in fact the opposite.

• Removing this rule would eliminate the complex and often arbitrary distinctions which currently apply around the surrogate's marital status, including:

o Difficulties managing the complexity of the HFEA forms concerning parenthood, with a need to establish whether the surrogate is married, whether her spouse consents to the conception and if so which forms can be completed to nominate an intended parent other than the biological father as a legal parent;

o The need to establish that the spouse of a surrogate who is separated but still married does not consent to the conception in order to eliminate the need for him to be involved in the parental order application (this has arisen in quite a large number of our cases);

o The risk of a surrogate's spouse refusing consent if there is a separation during the surrogacy process (this happened in a recent US surrogacy case of ours where the surrogate's husband threatened that he would not cooperate with any of the surrogacy paperwork following an acrimonious separation);

o The significant difficulties which arise in the context of British passport applications in establishing to the Passport Office's satisfaction whether an overseas surrogate (often with whom the intended parents have had little contact) is married or unmarried. This question has an often critical effect on whether the child is born British, and the Passport Office are suspicious of documentation provided to demonstrate that a surrogate is not married. In practice, many parents then have to follow an additional British nationality registration application process, which extends the period during which the child is stranded overseas and adds cost and delay.

• Please note that, even if a surrogate's spouse (or partner) is not a legal parent, we do not think that means that he/she should not be involved in or a party to the surrogacy agreement. He/she is an important part of the process and has an important and intrinsic support role for the surrogate. If a man, he may also be committing to abstinence during the period of trying to conceive.

No

Please share your views below:

Please see 1.16 above.

23 Consultation Question 16:

Yes

Please provide your views below:

We agree that intended parents should be registered as the parents of a stillborn child. If the Law Commission adopts our suggestion that there is no right to object in the pathway then the intended parents will be the legal parents of a stillborn child in any event. Where the pathway does not apply, we agree that it should be possible to register the intended parents as the legal parents without a parental order application.

Other

Please provide your views below:

Please see 1.18 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?

Yes

Please provide your views below:

We agree that intended parents should be registered as the parents of a child who dies soon after the birth. If the Law Commission adopts our suggestions regarding the surrogate's right to object and for a parental order to be made pre-birth (or promptly post-birth), the intended parents will be the legal parents in any event (please see our responses to Questions 11-13 and 108). If not, we agree that the surrogate should be able to consent to them being so registered without a court process being required (this is humane). However we note the lacuna in respect of a child who dies after the birth is registered but before a parental order is granted.

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:

We do not think the surrogate should have a right to object, and therefore the intended parents will be the legal parents if the surrogate dies. Please see our response to Questions 11-13.

However, even if the surrogate retains a right to object, we do not think intended parents should lose their right to be registered as legal parents because the surrogate has died. It seems inhumane in tragic circumstances to require the intended parents to follow a more onerous process than everyone intended, and without any real benefit to anyone. Why is greater judicial oversight needed in these circumstances? Is there any reason to think that a surrogate who died would be less likely to want the intended parents to be recognised as the legal parents from birth? Is it not even more likely she would want the child promptly recognised as the child of the intended parents, given that she cannot now gain any benefit from exercising her right to object?

26 Consultation Question 19:

Other

Please provide your views below:

We think that the intended parents should be the legal parents from birth if the pathway steps have been followed, even if one or both of them has died.

Outside the pathway we think that it should be possible for the court to make a parental order awarding parenthood to the parents who were intended to be the legal parents when the child was conceived, irrespective of what has happened since. The court should therefore be able to make a parental order in favour of both intended parents if one of them has died, and should be able to make a parental order in favour of the intended parents if they have both died (in which case the application would need to be brought by another appropriate person, either the surrogate or the child's nominated guardian):

• The child would then have the same rights as any other children who tragically lose their parents, including rights of inheritance and rights of identity in respect of their birth certificate.

• The guardians nominated by the parents in their wills would then acquire parental responsibility automatically, as for other orphaned children. If no

guardians had been nominated, the family court would be able to appoint a guardian under the provisions of the Children Act (which only apply where the child has no surviving parents with parental responsibility). This would protect the surrogate from responsibility as well as protecting the child.

• These issues engage article 8 and article 14 rights for the child and any surviving parent, in respect of his her or identity, biological ties with an intended parent and privacy, with which the law must be compliant. Please note that we are currently in the middle of a case in which the intended father tragically died during the pregnancy, and we are arguing that the court should be able to make a parental order in favour of a deceased parent even though he is not himself an applicant in order to comply with the provisions of the Human Rights Act 1998.

Please provide your views below:

Please see 1.22 above.

27 Consultation Question 20:

Other

Please provide your views below:

This seems excessively complicated. We think that the relationship status requirement should be removed from the criteria for parental orders, and replaced with a simpler requirement that the court can award parenthood to the person or persons who were intended to be the child's parents at the time of conception.

Please see our response to Question 108 about how we think the parental order process and criteria should be reformed.

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:

We do not think that a three-parent model is appropriate for surrogacy cases. It does not reflect what any of the parties intends, and it is difficult to see how it is in the best interests of the child. It simply replaces one form of legal limbo with another.

We do think the Law Commission should consider whether a three-parent model should be permitted within UK law for co-parenting situations where a child is intended to have more than two parents.

29 Consultation Question 22:

Please provide your views below:

We have considered this question very carefully, but on balance we think that the pathway is appropriate without further judicial or administrative oversight (other than regulation of surrogacy organisations):

• We considered whether a pre-birth judicial process (giving a pre-birth court order on parentage) would give greater certainty to families than the proposed administrative pathway. We have been mindful of the recent failures of UK fertility clinics to carry out procedural legal parenthood steps in sperm donation cases and the uncertainty and distress this has caused for families later told that they may not be their children's legal parents. We have also been mindful that a court order may be better recognised in other jurisdictions.

• However, we think the process for confirming parenthood should be as simple and light-touch as possible in order to reduce the cost and burden for families. We are also mindful that parents who need a court order have the option of applying for a declaration of parentage under s55A Family Law Act 1986.

• We think that regulated surrogacy organisations will play a key role of oversight, carrying out their responsibilities under licence, and ensuring that other professionals have played their role. Given the significance of this role, we think that only a holder of a surrogacy licence should be able to conduct the necessary welfare of the child assessments and confirm that a surrogacy agreement meets the pathway requirements.

• To protect families and enhance certainty, we think the law should provide specifically that confirmation that a surrogacy arrangement meets the pathway requirements by a regulated surrogacy organisation is conclusive evidence of legal parenthood.

30 Consultation Question 23:

Please provide your views below:

We do not have a strong view on whether it is necessary to adapt the existing welfare checklist:

• Our experience of disputed surrogacy cases is that the court considers a broad range of factual issues under the existing welfare checklist. That includes what was agreed between the parties at the time of conception, the biological and social relationships between the parties and the child, and the willingness of each of the parties to acknowledge and respect the role of the other parties in the child's life. We have no objection to this being explicitly included in the welfare checklist for a child arrangements order, although it is evident from prior case law in any event.

• Going forward, the court may be considering parental order applications in disputed cases as well as child arrangements orders. We think consideration should be given to whether the welfare checklist should be adapted in relation to issues of parentage (as distinct from care arrangements). Please see our

comments in response to Question 24.

31 Consultation Question 24:

Please provide your views below:

We think that the current parental order process should be significantly re-designed to update and simplify it (please see our response to Question 108). In line with this, we think the welfare checklist should be adapted for parental order applications:

• If the court is considering a parental order application pre-birth, the welfare assessment should be based on the pre-conception welfare assessment otherwise used in pathway cases because the 'child' does not then exist.

• If the court is considering a parental order application post birth (whether because this is when the application is made or because the pre-birth assessment has raised any concerns), the current welfare checklist for children in parental order applications should be adapted to make it appropriate to surrogacy. For example, it is not appropriate to consider, when determining a transfer of legal parenthood, the likely effect on the child of ceasing to be a member of his or her 'original family' and the child's wishes and feelings usually cannot be meaningfully assessed given that he or she is an infant.

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:

We think both intended parents and surrogates should be able to apply for a child arrangements order without the court's leave so that they all have the right to ask the court to determine any disputes in relation to contact and/or who the child should live with, and regardless of who the legal parents are.

33 Consultation Question 26:

Yes

Please provide your views below:

Yes we agree. However, we also think that the law should be further reformed to enable parenthood to be granted to intended parents more quickly, even outside the pathway (see our response to Question 108).

34 Consultation Question 27:

Yes

Please provide your views below:

We agree if this model is adopted, although we do not think there should be a condition that the child is living with them – they should have parental responsibility on the basis of their intent to apply for a parental order.

However, as expressed elsewhere, we do not generally agree with this model. We think the intended parents should be the legal parents from birth without the surrogate having a right to object, and should have parental responsibility automatically. Even if the Law Commission disagrees with this, we think that (if the surrogate exercises her right to object) the intended parents should be the legal parents (with parental responsibility) while a parental order application is considered and that their parental responsibility should only be terminated if the court so decides. Please see our responses to Questions 11-13.

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:

If the objection model is adopted, we do not agree that a surrogate should have parental responsibility during the objection period, unless she exercises her right to object. The overwhelming majority of surrogates will not wish to exercise their right to object and so parental responsibility is an unwanted burden which goes against their wishes. Sharing parental responsibility with the intended parents for 35 days post-birth is merely likely to promote confusion among health professionals in the key post-natal period.

However, as expressed elsewhere, we do not generally agree with this model. If the surrogate does not have a right to object, she will not be a legal parent at birth and will not have parental responsibility. If alternatively her right to object only triggers a court process, then again she will not have parental responsibility unless awarded by the court. Please see our responses to Questions 11-13.

36 Consultation Question 29:

Please provide your views below:

We think this is overly complicated and that there should be no automatic restrictions on parental responsibility:

• In line with our other responses, we do not think that, within the new pathway, there should be any shared parental responsibility since the intended parents will be the sole legal parents from birth.

• In cases falling outside the pathway, the legal parents will (pending the grant of a parental order, assuming one is not made pre-birth) be the surrogate and one of the intended parents, and they will presumably share parental responsibility. In practice, we have not seen any cases where someone has sought to interfere in parental responsibility decisions and we see no practical need to put complicated legal structures around parental responsibility in the interim period. These are likely to be poorly understood in the general population, and will only be relevant for a limited period.

• We think that the family court's existing powers to manage any issues concerning interim parental responsibility under the child arrangements order framework are sufficient, if required.

• We propose that the parental order system be reformed more extensively to enable orders to be made pre-birth or very promptly post-birth so that the limbo period is minimised. Please see our response to Question 108.

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:

We agree that traditional surrogacy arrangements should fall within the scope of the new pathway:

• Although Brilliant Beginnings has made a policy decision to focus on gestational surrogacy, we think that traditional surrogacy is equally legitimate. We have in fact evolved our policy to include traditional surrogates who are friends or family members or are part of a team who has experienced failed transfers as gestational surrogacy journeys. We have also reviewed our intake policy to include traditional surrogates who are prepared to work through a clinic for IVF. We recognise that it is a simpler, less invasive and less costly form of surrogacy for many surrogates and intended parents and therefore see no reason not to include traditional surrogacy within the new pathway.

• We think it is important for policy to be based on evidence, and we have seen research from Cambridge University which has demonstrated good outcomes for traditional surrogacy. We also see no evidence from our legal experience that traditional surrogacy is more likely to result in a dispute, despite popular misconception about the greater risk of a change of heart if there is a biological connection. We fundamentally think that the law should respect the choices of women to commit to being an egg donor and a surrogate for the same intended parent/s.

• However, we do think that traditional surrogacy poses different challenges to gestational surrogacy and that these need to be managed. Counselling should explore with everyone the significance of the genetic connection, the impact on the surrogate's own children and wider family etc. The medical screening will also need to be different, given that the scope for quarantining sperm etc is not possible where conception takes place at home. This can be dealt with in a specific surrogacy Code of Practice from the regulator.

• Our long legal experience shows that traditional surrogacy arrangements are particularly vulnerable to risk of problems, not because of the genetic issues, but because the opportunity to conceive through home insemination means that it is easier for the parties to a surrogacy arrangement to rush ahead without any third party involvement which encourages them to pause, think things through and set clear foundations. We think that the pathway requirements will provide a significant protection in this regard, and that traditional surrogacies should have the opportunity to fall within them.

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 – we are not an independent surrogate or parent through independent surrogacy.

39 Consultation Question 32:

Please provide your views below:

We think that there should be a dividing line between surrogacy cases in which there has been oversight by a regulated surrogacy organisation, and those in which there has not. However, we would like to bring independent surrogacy groups (and particularly those which do encourage appropriate screening and safeguards) within this structure as far as possible:

• For the pathway to operate with integrity, there needs to be someone accountable to verify that steps have been followed and 'sign off' a surrogacy agreement for legal parenthood purposes. In practice, we think this can only be done by a regulated surrogacy organisation subject to an HFEA surrogacy licence which requires compliance with a surrogacy Code of Practice. The regulated surrogacy organisation will fulfil certain responsibilities itself as well as pulling together the threads of input from other professionals (medical, legal, counselling).

• Provided that an individual is willing to become the 'person responsible' on behalf of an independent surrogacy group and to obtain and fulfil the licence

requirements, we see no reason why independent surrogacy groups should not be brought within this framework, even if their collective organisation is looser than the more formal non-profit surrogacy organisations.

• We do not think that the HFEA directly, lawyers or fertility clinics without surrogacy licences should be able to validate surrogacy arrangements under the pathway. In respect of the HFEA, this would be a significant departure from their current oversight and licensing role and we do not think they have the skills, or will want, to fulfil this role. In respect of clinics and lawyers, they only have experience in one limited area of the pathway and will not be subject to the surrogacy Code of Practice which will ensure that the more nuanced checks (such as the welfare of the child assessment) are properly done.

• We think that surrogacy organisations should be encouraged to offer light-touch service options for surrogacy teams who do not require matching (including teams who have met independently, and friends and family surrogacies), so that they can be taken through the key parts of the pathway appropriately. At Brilliant Beginnings we already offer this, with a service for friends and family which includes a mediation process to help consider all the issues and put things in writing, and legal advice. This both helps give structure as well as expose areas of misalignment and potential conflict.

• We think those who choose to operate truly independently (without involving a surrogacy organisation at all) should not be able to self-certify that they have followed the pathway steps. We do not see how this would be practical given the need to conduct a welfare of the child assessment and medical screening. We also think these arrangements are the most risky and the most prone to problems, and it is appropriate for them to be excluded from the benefits of the regulated process and to fall within the safety net of judicial oversight instead.

Please provide your views below:

Please see answer to 1.36.

40 Consultation Question 33:

Yes

Please provide your views below:

We agree with the proposal that there should be regulated surrogacy organisations:

• Brilliant Beginnings, COTS and Surrogacy UK (and some of the well run independent surrogacy groups) have, we think, self-regulated very well to date, and have a wealth of practical experience of surrogacy. Any regulation should therefore make sure to include them as far as possible.

• We have experience of another UK surrogacy agency mentioned in the Law Commission's consultation document which appeared to be operating commercially and did not engage in ethical or honest practice, and provided extremely poor support to both intended parents and surrogates. We had numerous clients complain of very difficult experiences, and were approached for information by both the Department of Health and (on several different occasions) the police following complaints to them. Without a regulator to report the agency to, there was very little that could be done. We understand that they still operate matching UK surrogates in the UK with UK IPs although have moved their head office to the US, which might be to circumvent the UK legal restrictions. We think regulation will help safeguard against these kinds of experiences from being repeated and new organisations being established without any regard for complexities and stresses of surrogacy.

Yes

Please provide your views below:

Please see above answer to (1).

Yes

Please provide your views below:

Please see above answer to (1).

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:

We agree with the proposed responsibilities for licence-holders.

In line with our proposal that the law should state that a certification of a surrogacy agreement from a regulated surrogacy organisation is determinative in respect of parenthood (see our response to Questions 8 and 22), we wonder if it would be helpful for a licence holder to have specific responsibility, when validating that a surrogacy agreement has met the pathway requirements, to do so honestly and with all due diligence.

We do not think it is necessary to stipulate any particular experience, skills or qualifications to be a licence holder, but we do think there should be some kind of character requirement. This might be modelled on the character requirements for solicitors and, for example, exclude people who have been

disqualified as directors or convicted of any offence involving dishonesty

Please provide your views below:

Please see above answer 1.39.

Please provide your views below:

Please see above answer 1.39.

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:

While we agree that the law should retain the prevention of profit-making surrogacy introduction services, we have really struggled this question because we think it conflates this with another quite separate issue, which is the purpose and scope of HFEA regulation.

Ultimately we think that the non-profit restriction should relate to the activity of surrogacy introduction, rather than the licensed organisation as whole. We think that HFEA licensing should confirm to who is properly qualified and regulated to confirm compliance with the pathway, irrespective of whether or not they are a non-profit making body:

• It would be illogical to allow profit-making licensed fertility clinics to have a licence which enables them to manage the pathway, while requiring surrogacy organisations to be non-profit to do precisely the same thing.

• If HFEA licences can only be granted to non-profit making bodies, this takes the non-profit restriction significantly further than the current law. Potentially it would cover all the activities conducted by a surrogacy organisation, rather than just its introduction services.

• We are concerned that this may have unforeseen implications and might inadvertently prevent (desirable) professional involvement in aspects of surrogacy which are not related to the initial introduction (such as legal advice, medical screening, counselling, mediation and therapy, which are all routinely provided on a profit-making basis). We have seen through our experience in Canada that restrictions on intermediaries' activities have had a detrimental effect in terms of safeguarding, since screening and preparation is not properly carried out. We would be happy to have a further discussion about this.

In respect of our response to retain the non-profit requirement for the specific activity of introduction services, we have considered this question carefully and consulted parents and surrogates we have worked with. Some felt that it was illogical to require 'agency' services to be required to be non profit while fertility clinics and lawyers are not, and/or wanted to encourage more professional UK agencies to stimulate choice and better availability of surrogates. However, conversely others felt that the UK's current surrogacy services have real 'heart' which might be put in jeopardy if a profit incentive were introduced, and that allowing profit-making agencies could add to the costs for intended parents. On balance we take a pragmatic view that the current system of non-profit introduction services is working well, and that there is no real need or demand to change it, at least for the time being.

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:

On the basis that this definition relates to potential criminal restrictions, we would suggest that it is very clearly drawn in relation to what we would call 'introduction services' possibly defined as follows: 'Arranging or facilitating the introduction of potential surrogates and intended parents with a view to them making a surrogacy arrangement'.

• We think that referring to 'introduction services' rather than 'matching' has the advantage of capturing both active matching services (such as those provided by Brilliant Beginnings) and the activities of the other surrogacy organisations which do not 'match' but do provide physical or online spaces to enable surrogates and intended parents to connect with each other.

• 'Introduction services' is a similar but more modern equivalent to the activities permitted only for non-profit organisations in the Surrogacy Arrangements Act 1985 (compiling lists of prospective parents/surrogates and introducing them to each other). These restrictions have, in practice, created the existing system of non-profit surrogacy organisations.

• We do not think the law should go further by providing that 'facilitation' should attract criminal restrictions if offered for profit. We have considered the activities suggested in the consultation document which might fall within facilitation (rather than matching), which are:

o providing advice and support to surrogates and intended parents on the surrogacy process, and

o helping to manage the relationship.

These are activities which may (desirably) also be offered by professionals who make a profit. For example, private fertility clinics provide advice and support on the surrogacy process; lawyers give legal advice on the surrogacy process and help to manage the relationship by drafting the agreement; other professionals give support including counsellors, therapists, mediators etc. We do not think the intention is to prevent professional support being offered or to restrict this kind of wider support to non-profit organisations.

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:

Again, we think this question conflates what are separate issues. We think that:

• Only non-profit organisations should be able to offer introduction services for payment.

• Only regulated licence-holders should be able to verify that an arrangement complies with the pathway.

In practice, parents and surrogates match/meet via informal Facebook groups, social events, friends and family and in lots of different ways, and we do not think it is possible or practical for the law to require everyone facilitating introductions to have a licence (although it can prevent them operating for profit if they receive any payment).

We think it is possible, and desirable, to enable people who have met other than via a regulated surrogacy organisation to ask a regulated surrogacy organisation to verify that they have followed all the proper steps if they wish to qualify for the pathway. If they do not do so, they can instead apply for a parental order.

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:

Please see answer to 1.44.

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 response to Questions 35-37. We think that criminal offences should be apply to individuals and organisations which provide 'introduction services' for profit. However, we do not think there should be any penalties for those offering introduction services (without profit) without a licence, because this does not seem workable. We do think there should be some kind of criminal penalty for a person or organisation holding themselves out as a licenced surrogacy organisation when they are not.

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:

We agree with this proposal, but think that regulation by the HFEA must be appropriate, proportionate and specific to surrogacy:

• There is no existing suitable regulator for surrogacy other than the HFEA, and the numbers of surrogacy arrangements do not currently justify the creation of a specialist regulator. The HFEA is also well-suited to operate the national surrogacy register alongside the Register of Information for donor-conceived people.

• However, we are mindful that the HFEA's existing experience of surrogacy is extremely limited, and almost entirely related to the clinical aspects of surrogacy which are a tiny part of the overall process of screening, matching, reaching an agreement, pregnancy, birth and legal process. The bulk of successful surrogacy management is about legal, emotional, psychological and communication issues throughout a long process, and the clinical aspects are a relatively small part of it (and for traditional surrogacy arrangements often not even present where there is no medical intervention).

• We therefore think that regulation for surrogacy may need to look very different to existing HFEA regulation. We would suggest that there is a separate surrogacy licence, with a separate Code of Practice administered by a specialist section of the HFEA. Given the HFEA's limited existing experience we would recommend that the HFEA works with the existing UK surrogacy organisations to design appropriate regulation and Code of Practice.

Please provide your views below:

Please see answer to 1.47.

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?

Other

Please provide your views below:

This is not a straightforward question to answer yes or no to, since a surrogacy agreement contains various different aspects. To break the question down, our thoughts are as follows:

• Whether an agreement should be enforceable in relation to the handover of the child at birth – We do not think that a surrogate should, as a question of contract law, be compelled to hand over a child (we think this is generally what people mean when they talk about agreements being 'unenforceable'). If there is any dispute about who the child should live with, the family court determines child arrangements on a best interests basis. This is a separate question to legal parenthood, is already the case, and is not subject to any change as a result of this consultation.

• Whether an agreement should be enforceable in relation to legal parenthood – We do not think that an agreement, of itself, should be enforceable as a matter of contract law in the civil court. However, we do think that if the parties have satisfied all the pathway requirements (which include putting a written agreement in place, but other steps too) then the intended parents should be the legal parents. For clarity, even if in the pathway the surrogate does not have a right to object (see our response to Questions 11-13), we do not think that means that the agreement is 'enforceable' since legal parenthood is created by operation of law and the written agreement is only one part of the requirements.

• Whether an agreement should be enforceable in relation to the financial terms – Yes we think it should, in the civil court, as a matter of contract law. This will enable a surrogate to claim any unpaid expenses/compensation from her intended parents and for the intended parents to not be liable for expenses/compensation over and above what is agreed.

• Whether an agreement should be enforceable in relation to medical consent decisions during the treatment and pregnancy – No, we think a surrogate should retain the right to make all medical decisions which affect her person (including whether to have a termination). Although such issues should be recorded in an agreement (to reflect discussion about this to achieve alignment between the parties as far as possible), these terms should be statements of intention and not contractually enforceable. We doubt, in any event, that it would be legally possible to enforce terms like this in civil law.

• Whether an agreement should be enforceable in relation to lifestyle issues – Surrogacy agreements commonly record issues agreed between the parties concerning lifestyle issues, such as the surrogate and her partner abstaining from sex during the period of trying to conceive, healthy lifestyle conditions (such as an agreement not to take recreational drugs, and to follow medical advice), travel restrictions (to prevent a child being born in a jurisdiction which does not support surrogacy) etc. We do not think these kinds of terms should be enforceable through specific performance (i.e. a surrogate should not be compelled to comply) although we doubt that it would be legally possible to do this in any event. However, we do think there may be a case for financial sanctions in some circumstances, for example where a surrogate knowingly ignores an agreement not to travel outside the country in the late stages of the pregnancy, and this results in the child being born overseas and very significant medical and legal costs for the intended parents as a result. It is possible this could be limited e.g. to a partial return of any compensation or fee paid other than expenses.

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:

We agree that there should be no such prohibition:

• To be clear, the current law does not prohibit 'advising on' or 'facilitating' surrogacy agreements. The Surrogacy Arrangements Act 1985 only prohibits charging for 'negotiating' a surrogacy agreement.

• In practice, mediators, counsellors and support workers all routinely act as neutral intermediaries in UK surrogacy. They facilitate the discussion between intended parents and surrogates to help them reach their own agreement, and this is invaluable in ensuring the issues are properly discussed.

• However, under the current law the parties cannot access legal help in respect of negotiating and drafting the specific terms of a surrogacy agreement. UK surrogacy agreements are usually based on a template with a tick box format, rather than being specifically drafted. We have experience of many cases in which resulted ambiguity has caused difficulties between the parties at a later stage, particularly in respect of financial terms (for example, what a surrogate should be paid in the event of a miscarriage or in recognition of delivering twins).

• Allowing legal input into an agreement is an important safeguard, both to allow clarity and precision in the drafting, and to support the fairness of terms of both parties are legally represented. Proper drafting is important given that a surrogacy agreement will, under the proposed new law, have much greater significance than it does currently, both as an element of the pathway to legal parenthood, and in respect of the financial terms being enforceable.

• We even considered whether to propose that independent legal representation in preparing the agreement (and not just independent legal advice) should be a requirement of the pathway. In other jurisdictions (including California and Illinois) this is seen as a critical safeguard. However, we recognise the need to balance safeguards with costs, and think the costs of requiring legal input in the agreement likely to be more significant than the cost of legal advice. We therefore do not think that legal input into the agreement should be required, but do think it should be permitted and encouraged as best practice.

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:

Yes we agree that the ban on advertising should be removed:

• The law is widely breached in practice, particularly on online matching sites and Facebook groups (with various urban myths, such as that describing yourself as 'unmatched' is a way around the prohibition).

• The restrictions put surrogacy organisations at a disadvantage online, because they are more cautious about breaching the rules on advertising than individuals.

• We are not aware of a single case where there has been a prosecution under the existing law, which is in any event badly drafted and not fit for the digital age.

• The policy behind the ban on advertising was the desire to prevent surrogacy from occurring, which is inconsistent with modern attitudes on surrogacy. We do not see that the current ban serves any real purpose.

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:

We agree. We were not aware that this was not possible until discussions with the Law Commission informed us that the intended regulations to allow surrogate-born people to access their birth records were never enacted.

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:

We do not agree that the birth certificates of people born through surrogacy should state that the birth was the result of a surrogacy arrangement:

• There have been extensive Parliamentary and policy discussions about whether donor-conceived people should have an annotation on their birth certificate to indicate the circumstances of their conception. Parliament settled against such an annotation, primarily because a birth certificate is a public document used for various purposes where it would not be appropriate for a person to have to disclose the circumstances of their conception. We think the same concerns apply to surrogate-born people, and there are Convention rights involved here (in particular the article 8 right to private life).

• We would welcome a wider debate about the information to be recorded on birth certificates, and in particular whether we should consider including an annotation on all UK birth certificates which says that a birth certificate is a record of legal parentage and that other information may be available through the HFEA registers (but without publicly singling out people conceived through assisted reproduction).

• While we support the right of surrogate-born people to know the circumstances of their conception and think that openness and honesty should always be encouraged, we also think that surrogate-born people should be treated consistently with other people conceived through assisted reproduction, and given the same rights to privacy.

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:

Yes we think the birth registration system needs further review. In particular, our work with modern families means that we see the lack of recognition for trans parents (highlighted in the recent case of Re TT) and multiple parent families (where only two of three or four parents can be registered on the birth certificate).

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:

We agree that good quality information should be kept for surrogate-born people and made accessible to them at an appropriate age. To ease access to information (and to ensure that information is accessible to existing children as well as those conceived going forward), we wondered whether it might be possible for existing court files to be transferred to any new national surrogacy register.

55 Consultation Question 47:

Other

Please provide your views below:

We agree with this proposal, but with some safeguards:

• We assume the register will be run in a similar way to the HFEA Register of Information for donor-conceived people.

• We are conscious that not all information will be available in all surrogacy cases (for example in international surrogacy cases where an anonymous donor has been used), but we think reasonable efforts should be made to collect and safeguard whatever information is available.

• We had feedback from several parents through surrogacy that, while they supported their children having access to information about themselves, they felt nervous about being included in a state register which might be used for other purposes without their consent. We would suggest that the law makes clear the purposes for which information on the register can be used, and that this is narrowly defined.

Other

Please provide your views below:

Please see answer to question 47 (1.56)

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 we agree.

57 Consultation Question 49:

Yes

Please provide your views below:

Yes we agree with this proposal:

• We are mindful that many surrogate-born people will be on both the surrogacy and donor-conceived registers (if an egg donor was used in the UK as well as a surrogate). Information should therefore be accessible, and provided, in a joined-up and sensible way.

• We therefore think the rules for accessing information at 16, 18 and before should be consistent with those for the register for donor-conceived people.

• We are mindful that the growing dominance of DNA testing sites which are enabling people to find donors more informally outside the scope of the register. This may make a case for giving more structured access to the register before children reach the age of 16, but any changes should be consistent to both groups.

• As a matter of language we would encourage the Law Commission to avoid using the word 'children' when referring to a person over the age of 18.

Please provide your views below:

Please see answer to question 49 (1.59)

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:

Although including this would be consistent with the rights of donor-conceived people, we think it will be of limited practical significance:

• It would be interesting to know how many requests of this kind have been made by donor-conceived people since 1991, to see whether this right is one which is ever exercised, or just something which reassured Parliamentarians about the risk of donor-conceived genetic siblings inadvertently having children with each other.

• We question whether it will matter to surrogate-born people to be related to someone gestationally.

• Our experience is that surrogate-born people are very likely to know their surrogates, while very few donor-conceived people (or their parents) know their donors.

• Surrogate-born people will be able to access identifying information from the age of 18 anyway, so this will only really matter to those entering into relationships between the age of 16 and 18.

59 Consultation Question 51:

Yes

Please provide your views below:

Yes we agree to both these proposals. They raise an interesting question about whether the information on the register should be limited to genetic connections or should also include wider information about who collaborated to help conceive a child. We take the view that it is not for anyone else to decide what types of information may be important to surrogate-born people, and that all such information should be accessible.

Please provide your views below:

Yes we agree to both these proposals. They raise an interesting question about whether the information on the register should be limited to genetic connections or should also include wider information about who collaborated to help conceive a child. We take the view that it is not for anyone else to decide what types of information may be important to surrogate-born people, and that all such information should be accessible.

60 Consultation Question 52:

Please provide your views below:

We support, in principle, information being available so that individuals can decide for themselves what they wish to access. We know there is an existing gap in the law for donor-conceived people, who are not able to contact genetic siblings who are the donor's own children via the register (which we have been told is because those children are not recorded on the HFEA register). We would therefore welcome that, if surrogate-born children and surrogates' children are given such a right, the rules in relation to donation should be tidied up to match.

Please provide your views below:

We support, in principle, information being available so that individuals can decide for themselves what they wish to access. We know there is an existing gap in the law for donor-conceived people, who are not able to contact genetic siblings who are the donor's own children via the register (which we have been told is because those children are not recorded on the HFEA register). We would therefore welcome that, if surrogate-born children and surrogates' children are given such a right, the rules in relation to donation should be tidied up to match.

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:

We are not entirely clear what this question means. Is the Law Commission envisaging an intended parent who subsequently abdicates responsibility for his/her child and does not apply for a parental order? If so we think there is a case for such a person being required to be a legal parent (either by pathway or parental order) in which case there would be no need to record them on the register. Otherwise they should be so recorded.

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:

We agree, since case law now means that this deadline no longer in reality exists, and statutory amendment would make this clearer. We were involved in a case in which even the court did not know this, and refused to issue an application made out of time since it was not aware of the ruling in Re X (2014).

However, we propose more extensive modification to the criteria and process of parental orders. See our response to Question 108.

63 Consultation Question 55:

Yes

Please provide your views below:

We agree that the court should have the power to dispense with the consent of the surrogate to a parental order if in the child's best interests:

• Under the current law a surrogate (or her spouse) can permanently veto the intended parents' legal parenthood for any reason at all (including irrational reasons contrary to the child's best interests), and the court has no power to override this. This is contrary to the principle which runs through the whole of UK family law that the child's welfare is the court's paramount consideration. It is also conceptually bizarre, given that a surrogate who has carried someone else's child has more power in law to retain legal parenthood than a woman who has given birth to her own child who can have her consent waived in the context of an adoption application.

• We assume that, if there is no time limit for making a parental order application, it would be possible for any parents previously blocked from apply for a

parental order to do so following a change in the law (subject to meeting the other requirements) and we would encourage this.
We think the requirement that the child is living with the parents to be an unnecessary restriction:

• As we have said elsewhere, we think the issues of arrangements for the child and legal parenthood should be kept separate. In practice a family court is unlikely to award parenthood where the child is not living with the intended parents but this can form part of its general assessment of what is in the child's best interests, without any need to make it a legislative requirement.

• Such a requirement may create a greater incentive for a surrogate who has fallen out with her intended parents and objects to a parental order not to surrender the child to the parents.

Yes

Please provide your views below:

We agree that the court should have the power to dispense with the consent of the surrogate to a parental order if in the child's best interests:

• Under the current law a surrogate (or her spouse) can permanently veto the intended parents' legal parenthood for any reason at all (including irrational reasons contrary to the child's best interests), and the court has no power to override this. This is contrary to the principle which runs through the whole of UK family law that the child's welfare is the court's paramount consideration. It is also conceptually bizarre, given that a surrogate who has carried someone else's child has more power in law to retain legal parenthood than a woman who has given birth to her own child who can have her consent waived in the context of an adoption application.

• We assume that, if there is no time limit for making a parental order application, it would be possible for any parents previously blocked from apply for a parental order to do so following a change in the law (subject to meeting the other requirements) and we would encourage this.

We think the requirement that the child is living with the parents to be an unnecessary restriction:

• As we have said elsewhere, we think the issues of arrangements for the child and legal parenthood should be kept separate. In practice a family court is unlikely to award parenthood where the child is not living with the intended parents but this can form part of its general assessment of what is in the child's best interests, without any need to make it a legislative requirement.

Such a requirement may create a greater incentive for a surrogate who has fallen out with her intended parents and objects to a parental order not to surrender the child to the parents.

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

64 Consultation Question 56:

Yes

Please provide your views below:

We agree with the proposal that eligibility for the pathway and a parental order should be expanded to include intended parents who are habitually resident in the UK as well as those who are domiciled here:

• We have given jurisdiction careful consideration, given the understandable policy intention not to make the UK a surrogacy 'destination'. We think this is a real prospect, given that both Brilliant Beginnings and NGA receive enquiries from intended parents from outside the UK who wish to access UK surrogacy (particularly from European countries which prohibit surrogacy). A short qualifying residence period might help with this.

• We have been involved in a small handful of cases (probably not more than 10) in which parents from overseas who are neither resident nor domiciled in the UK have proceeded with UK surrogacy arrangements. Most of these have involved UK surrogates who are existing friends or relatives of the intended parents (for example the sister of an Australian intended mother) and who consent to remaining the legal mother in the UK. However, in two cases, male same-sex couples from Ireland had connected with UK surrogates on Facebook and had children born in the UK who were never subject to a parental order, with the surrogates seemingly unaware of the implications of this for them. In most cases, the domicile requirement for a parental order deters this.

• However, enabling parents to establish jurisdiction on the basis of residence as well as domicile is likely to reduce legal burden and delay. We have worked with many parents (probably more than a hundred) who are originally from outside the UK and who under the current rules need to demonstrate that their move is permanent and that they never intend to leave (including Re A and B (2013)). The bar for establishing domicile of choice is high, and subjective, and the High Court judges take individualised approaches. One in particular applies an unreasonable level of scepticism even when proper evidence has been filed, and this creates a significant burden for applicant parents, legal complication and delay.

• It is very difficult for agencies to assess clearly whether intended parents are UK domiciled or not. Brilliant Beginnings has a high level of prospective or actual intended parent clients who need to be referred for early legal advice with the NGA Law team.

• The children of parents living long term in the UK (but where their parents have an eventual intention to return to their country of origin) are left completely outside the current rules, which means they have no sensible means of securing their legal parentage while they are living as a family – often long term – in the UK.

• It is also important, however, that domicile also remains as a base of jurisdiction. We have worked with a significant number of intended parents (more

than a hundred, at least) who are British parents living overseas who plan to return to the UK in the future and wish to secure their parental status at home (including CC v DD (2014) and Re AB (2016)).

Please provide your views below:

Please see above answer to question 56 (1.68).

65 Consultation Question 57:

Please provide your views below:

We think that the relationship status requirements should be abolished, and that the law – in recognising shared intention as the foundation of a surrogacy arrangement - should more straightforwardly focus on who intended to be a legal parent:

• The original policy underpinning the relationship status requirement was to restrict parental orders (and so indirectly to restrict access to surrogacy) to heterosexual married couples only. Eligibility expanded from 2010 to include same-sex and unmarried couples, but a policy line remained which excluded single parents. However, following the ruling of the President in our case of Re Z (2016) that this was incompatible with articles 8 and 14 of the European Convention on Human Rights and discriminatory, section 54A was passed to end that discrimination and include single applicants. The initial version of the remedial order had to be redrafted following feedback from the Joint Committee on Human Rights that the narrowly drawn definition of single applicants would have excluded some parents from being able to apply on the basis of relationship status, and that was not acceptable. Current policy is therefore that the law should not discriminate on the basis of relationship status.

• At the same time, the various different categories in the legislation mean that applicants need to fit within one box or another, and that can be complicated. Case law has had to 'read down' the legislation to get around the rules and ensure they are compatible with the Convention, for example where joint applicants have separated, are not cohabiting or one has died.

• What we now have is therefore just a complex set of categories which excludes almost no one and reflects no coherent policy.

• In line with surrogacy being about shared intention, we think that a parental order should confer parenthood on the people who intended to be the child's parents at the time of conception, regardless of their relationship status.

• We also think that the potential applicants for a parental order should not only be the people who wish to acquire legal parenthood. We think it should be possible for the application to be brought by any of the intended parents (if one is unwilling or has died), the surrogate (to enforce responsibility on the intended parents if they seek to abandon the child, in line with the pathway) or (if both intended parents have died) any guardian appointed for the child, on the basis that the order sought would make whoever intended to be the parents at the time of conception the child's legal parents.

This would mean that an intended parent could not abdicate his or her responsibilities by failing to apply (someone else could apply on their behalf – either their partner or the surrogate). It would enable bereaved children to have their parentage recognised. If a requirement for a genetic link is retained, it would also resolve the difficulties we have seen in practice when parents separate or one dies and the surviving sole applicant is not a biological parent.

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:

We do not agree. While this will not be factually problematic in most cases, we think that the pathway is a mechanism which deals with legal parenthood rather than child arrangements, and that it is conceptually better to keep the two separate. We therefore think that, if a declaration is made, it should be that the intended parents intend to be the child's legal parents.

67 Consultation Question 59:

Other

Please provide views below:

We agree that double donation should be permitted in the new pathway, but we do not agree that there should be a 'medical necessity' requirement:

• Double donation is permissible in UK fertility treatment where no surrogate is involved. It therefore seems illogical not to allow it in surrogacy. There is no real rationale for a genetic connection being crucial if someone needs the help of a surrogate but not otherwise.

• The current requirement for a genetic link has a disproportionate impact on single women, because it is relatively common for whatever fertility/medical issues have affected a woman's ability to carry a pregnancy to also have affected her ability to provide her own eggs. The majority of the single women we work with fall into this category. Although not yet legally challenged, it is possible this is indirect discrimination and/or a breach of Convention rights.

• UK law has never had a requirement of medical necessity for surrogacy, and we struggle to see why there is any practical need to introduce one. Of the 1,000+ surrogacy cases we have dealt with, we have never seen a case of 'social surrogacy' where there was no good reason to use a surrogate. We have had a small handful of cases in which women have suffered from tokophobia, a poorly-understood psychological condition which leads to a fear of pregnancy and/or birth. If a medical necessity requirement was introduced, we would be concerned that such women would be discriminated against

and/or would feel even more marginalised than they already do. We would also be concerned about potential discrimination against trans parents and others who may have good but non-medical/non-necessary reasons for using donors.

We are neutral as to whether the requirement for a genetic connection should remain for surrogacy cases in which parental orders are needed (both domestic and international):

• On the one hand we have worked with a small number (maybe 7 to 10) parents who have conceived without a biological connection, 2 couples and the rest single women, all through well-regulated US surrogacy arrangements. None have chosen to apply for adoption in the UK, which means that their children all remain in legal limbo, without a secure legal connection with their parents. If a parental order was available they would likely have applied to resolve things properly, as most parents through surrogacy do. It is important to remember that parental orders resolve parenthood; they do not act as a gateway to determine who can access surrogacy. Restricting parental orders therefore may simply mean that some children are denied legal parentage.

• We hope that it will be possible for UK law to recognise legal parenthood in some overseas surrogacy cases automatically (either through the proposed Secretary of State's power, or by the proposal we have made in response to Question 98). If so, we presume that this will include those using double-donation, which we would welcome to reduce the impact of the prohibition on parents doing this, and to incentivise 'good' destinations.

• However, we also acknowledge the counter-argument that surrogacy might be used as a disguise for child trafficking and that the requirement for a genetic connection is a secure way of ensuring that the intended parents were involved pre conception. This may be an issue, not just internationally, but also in respect of UK surrogates. We have had a number of enquiries over the years from pregnant women wanting to arrange a surrogacy when they should be arranging an adoption through the proper authorities. We do not feel we know enough about child trafficking to be able to comment further on this.

Please provide views below:

Please see above answer to question 59 (1.72)

Other

Please provide views below:

Please see above answer to question 59 (1.72)

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:

Yes we agree, although see our response to Questions 11-13 regarding the surrogate's right to object. If she does not have a right to object, we cannot easily see how an arrangement could begin in the new pathway but then fall outside it.

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?

Other

Please provide views below:

Please see our response to Question 57, in which we set out that we think a parental order should always be made in favour of the people who intended to be the child's legal parents.

70 Consultation Question 62:

Please provide your views below:

We do not think there should be a requirement for medical necessity. Please see our response to Question 59.

Please provide your views below:

We do not think there should be a requirement for medical necessity. Please see our response to Question 59.

71 Consultation Question 63:

Yes

Please provide your views below:

We agree that all available information should be retained for the child as far as possible:

• It should be straightforward to record the surrogate's details on the national surrogacy register, whether through the surrogacy agreement in the pathway or through the parental order application outside it.

• Recording gamete donors is likely to be more complicated. If conception takes place via traditional surrogacy, this can be taken from the surrogacy agreement or parental order application. If a third party donor is used and conception takes place at a UK licensed clinic, this information will be sent to the HFEA Register of Information in any event. The difficulty arises if a donor has been used overseas. Some jurisdictions (such as the US) have a choice over anonymous and known donors; while in most other surrogacy destinations the donors are anonymous. We would suggest that the best available information is collected in all cases, but that it should not be required to give the donor's details.

Please provide your views below:

Please see answer to question 63 (1.79)

Other

Please provide your views below:

Please see answer to question 63 (1.79)

72 Consultation Question 64:

Yes

Please provide your views below:

We agree that there should be no maximum age limit for the grant of a parental order, although this should be taken into account as part of the welfare of the child assessment:

• We have worked with a number of significantly older parents who have conceived children (mainly in the US) and then sought our help to obtain a parental order/British nationality. There may be genuine welfare issues in such cases, which the court looks at closely when an application is made. However, denying such parents access to a parental order is unlikely to deter them from conceiving; it will merely deny their children secure legal parenthood.

Within the pathway it may be possible to enforce an upper age limit through regulation:

• This is possible within the pathway since oversight before conception means that the law can exclude certain categories of potential parents.

• At Brilliant Beginnings we follow the policy of UK fertility clinics, which is usually 50 - 54, and guidelines issued by ASRM in the US which is 55 (or a combined age for a couple of 110 years).

We agree that the parties should be over 18 before entering into a surrogacy agreement.

Please provide your views below:

Please see answer to question 64 (1.82)

Yes

Please provide your views below:

Please see answer to question 64 (1.82)

73 Consultation Question 65:

Yes

Please provide your views below:

Yes we agree with both these proposals. We have never seen a surrogacy case involving minors in our experience of 1,000+ surrogacy cases but would not wish to do so.

At Brilliant Beginnings, surrogates must typically be over the age of 21 in order to reflect the level of maturity in understanding the strenuous commitment. To date, we have not taken on a surrogate younger.

Yes

Please provide your views below:

Please see above answer to question 65 (1.85)

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Yes

Please provide your views below:

We agree that there should be medical screening for a surrogate, her partner (if involved) and the intended parents providing gametes:

• We do not think this proposal is controversial, since it broadly reflects what UK surrogacy organisations (and fertility clinics, where they are involved) already do. Enshrining this in regulation will ensure that there is consistency between the different organisations, and that all parties (and the child) are kept safe.
We have the following thoughts as to how this could work in practice:

• The regulated surrogacy organisation, before ratifying the validity of a surrogacy agreement, should be satisfied that medical screening has been carried out satisfactorily by an appropriately qualified medical professional.

• The object of medical screening should be to confirm that the use of the intended parents' gametes will not place the surrogate, her partner or the child at unreasonable risk; and that the surrogate is likely to be able to conceive and carry a pregnancy without unreasonable risk to herself or the child. We do not think the detail of how this objective is achieved needs to be set out in the law; it should be left to the licensing/ regulation system which can evolve.

• We think the current HFEA Code of Practice for licensed clinics can be used as a starting point for the regulatory obligations of licensed surrogacy organisations, but that it will need adapting to be

o more appropriate to surrogacy (for example in not classifying intended parents who are HIV+ with no detectable viral load as gamete donors) and

o to include traditional surrogacies where no clinic is involved (where different procedures may be practically needed e.g. different testing for transmissible diseases given that there will not opportunity to quarantine sperm).

• For completeness, we note that the Law Commission does not think that psychological screening is necessary as a pre-conception step. Although we do not feel that this should be a legal requirement (for reasons of cost), this is something we have recently introduced at Brilliant Beginnings, and we do think it has huge value in assessing surrogates' suitability for the emotional and personal experience of surrogacy, and is a valuable example of best practice.

Please provide your views below:

Please see answer to question 66 (1.87)

75 Consultation Question 67:

Yes

Please provide your views below:

We agree that there should be implications counselling for a surrogate, her partner (if involved) and the intended parents:

• We do not think this proposal is controversial, since it broadly reflects what UK surrogacy organisations already recommend and what fertility clinics already provide where the surrogacy is gestational. Enshrining this in regulation will ensure that there is consistency between the different organisations, and that all parties (and the child) are kept safe.

• The only significant issue is whether the law should require counselling to be offered (as is currently the position under the HFEA Code of Practice) or whether it should be mandatory. We think, given the sensitivity and significance of a surrogacy arrangement, counselling should be mandatory for those wishing to qualify for the 'pathway'. We accept that this may add some cost for those going through traditional surrogacy arrangements who do not currently opt to access professional counselling. However, given our experience of disputed surrogacy cases in which parents and surrogates were not adequately prepared emotionally for the surrogacy, we think this is justified.

We have the following thoughts as to how this should work in practice:

• The regulated surrogacy organisation, before ratifying the validity of a surrogacy agreement, should be satisfied that all parties have had implications counselling with an appropriately qualified counsellor.

• The object of implications counselling should be to provide a confidential space in which the parties can honestly explore their feelings about the proposed surrogacy, and have the opportunity to think about important issues they may not have considered. Counselling is therefore about preparation and not about suitability screening. However, it goes to heart of ensuring both informed consent and the welfare of the child. We do not think the detail of how this objective is achieved needs to be set out in the law; it should be left to the licensing/ regulation system which can evolve, and which can sensitively deal with the differing emotional implications of gestational and traditional surrogacy.

• We think it may be sensible for BICA to review its current guidance about the issues which should be covered in implications counselling. The list set out in the consultation document at paragraph 13.30 covers various issues which constitute legal and medical advice, which we think fall outside the

expertise of a counsellor. We have experienced cases in the past in which incorrect legal advice has been given to intended parents and surrogates by well-meaning counsellors (including about legal parenthood, about what happens if a surrogate 'changes her mind' 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?

Yes

Please provide your views below:

We agree that independent legal advice should be required for a surrogate and her partner (if involved) and for the intended parents. We have seen some commentary from other UK surrogacy organisations suggesting that legal advice should not be mandatory, we think mainly due to concern about cost. We think legal advice is important as a mandatory 'pathway' requirement and that the additional cost is justified by the benefits, for the following reasons:

• The cost of providing basic legal advice (see our response to Question 112 which suggests a fee of £300 plus VAT) is not excessive, and will be offset from the saving of the parental order court fee (£215) and also from saving the costs of wills for both the intended parents and the surrogate (which are currently needed because the intended parents are not the legal parents from birth). While additional legal services (such as drafting of the agreement) will be available we would recommend them as best practice, we do not think these need to be mandatory.

• It is already the policy of many fertility clinics (and recommended by the HFEA Code of Practice) to require legal advice for those having surrogacy treatment, albeit that only a few require both the surrogate and the intended parents to have separate advice.

• There is a crucial difference between the current law and the proposals for the new 'pathway', which is that the parties will, going forward, be entering into a legally-recognised arrangement. The agreement will have consequences in respect of parenthood, and will also be enforceable in respect of the financial terms. In that context it is important that everyone is clear about their legal status, rights and responsibilities before proceeding.

• Independent legal advice, like counselling, is a safeguard which helps ensure informed consent and protects against coercion. That reduces the risk of unethical arrangements, and of disputes, which could have significant implications for the child.
We have the following thoughts about how this could work in practice:
• The regulated surrogacy organisation, before ratifying the validity of a surrogacy agreement, should be satisfied that all parties have had legal advice from a qualified lawyer.

• We think it is important that legal advice is provided by a qualified lawyer. Although surrogacy organisations and support groups share legal information via peer-support, we have regular and ongoing experience of incorrect advice being given, even by experienced organisations.

• We have also seen lawyers who are not experienced in surrogacy giving incorrect advice, and so considered whether there should be a requirement for the advising lawyer to have experience in surrogacy. However, there is no obvious legal accreditation (similar to the counselling accreditation being recommended) which could be used, and we therefore agree that there should be reliance on the general regulatory rule from the Solicitors Regulation Authority that solicitors should not practice outside their areas of expertise. However, it may be possible for this to evolve through the regulatory system over time.

77 Consultation Question 69:

Other

Please provide your views below:

We agree with this proposal, as a sensible safeguarding measure for the welfare of the child and to give public confidence. We would not wish to see any offence preclude someone from having a child through surrogacy or being a surrogate, but we think the offences which preclude someone from adopting are appropriate for surrogacy, and that it is also sensible to give surrogacy organisations a wider discretion.

It would be helpful if licensed surrogacy organisations could themselves be given the power to request criminal records checks (with the consent of the individual) to ensure that any report is current.

Please provide your views below:

Please see above answer to question 69 (1.91).

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 do not think that the law should require a surrogate to have previously given birth, but this might be a question which could be considered in developing regulatory guidance:

• At Brilliant Beginnings we, as policy, require all our surrogates to have given birth before. As a protective 'belt and braces' agency, we want to minimise risk wherever possible. Our rationale in applying this policy is that a surrogate who has experienced pregnancy before is potentially more able to give

informed consent to becoming a surrogate. From a medical perspective, it also gives us a track record showing she is capable of carrying a pregnancy successfully and giving us information we can use to assess whether surrogacy would pose an unacceptable medical or psychological risk to her. We are also mindful of the possible risk of a surrogate not ever being able to carry a child of her own if the surrogacy impairs her fertility in some way.

• However, we recognise that these are perceived risks rather than being based on clear evidence. We recognise that other surrogacy organisations in the UK (which take a slightly less risk-averse approach to us) have worked with childless surrogates successfully, and have applied additional steps to protect against the risks set out above. As we have no experience of doing so ourselves, we do not feel able to judge the effectiveness of their processes. We are also mindful that none of our legal experience suggests that surrogacy arrangements involving childless surrogates are more problematic.

• Overall, we think that if there is to be policy on this issue it may be better to kept to regulatory guidance rather than being a legal requirement. However, we would defer to the views of those who have more experience of working with childless surrogates.

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:

We agree that there should be no fixed maximum number of surrogate pregnancies. The underlying concern here is whether a surrogate pregnancy will be safe for the surrogate and the child and we think that is best assessed on an individualised basis through medical screening.

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

Not Answered

Please provide your views below:

Our overall view on payments is that surrogates and intended parents should be free to make whatever financial arrangements they consider appropriate, and that the law (which has limited power to regulate this) should encourage clarity and transparency as far as possible. We therefore think that the HFEA Code of Practice should set out guidance on what the surrogacy agreement should address, and this should include agreement on financial arrangements having considered the various potential categories the Law Commission has identified, as well other key issues (such as how many embryos will be transferred, decisions around termination etc). We do not think the law needs to mention payments at a statutory level.

In line with this, we think that parents and surrogates should be able to choose whether payments are agreed on an allowance or itemised basis and whether they want receipts to be produced.

Please see our response to Question 86 for further comment.

81 Consultation Question 73:

Please provide your views below:

Yes, in line with our view that there should be choice and transparency, intended parents should be able to pay the surrogate her essential costs and this should be set out clearly in the agreement.

Please see our response to Question 86 regarding our proposal that the Law Commission categories are used as guidance in the HFEA Code of Practice rather than for legal boundaries. If the categorisation sets legal limits, then we think giving a clear definition of what is permitted under this heading may be problematic, even though this is the most narrowly-drawn category. For example, how do you properly quantify the additional food a surrogate eats as a result of being pregnant from a household family food budget?

82 Consultation Question 74:

Please provide your views below:

Yes, in line with our view that there should be choice and transparency, intended parents should be able to pay the surrogate her additional pregnancy costs if she wishes, and these should be set out clearly in the agreement.

Please see our response to Question 86 regarding our proposal that the Law Commission categories are used as guidance in the HFEA Code of Practice rather than for legal boundaries. Otherwise, if a clear legal definition of permissible additional pregnancy costs is needed, we struggled with translating one into practice as against the other pregnancy-related categories. We see the rationale and the examples given, but we think it would be difficult to define this with any clarity.

83 Consultation Question 75:

Please provide your views below:

Yes, in line with our view that there should be choice and transparency, intended parents should be able to pay the surrogate her surrogacy costs if she wishes, and these should be set out clearly in the agreement.

If it is necessary to define this category to set a legal limit (rather than to use it merely for guidance), we also think that this will be problematic. Costs paid in connection with a surrogacy is in practice defined by what has become customary and that is likely to escape any clear legal definition. The payment of recuperative holidays is a prime example. Although there is a rationale for saying a surrogate deserves to re-bond with her family after a surrogacy (making this a customary surrogacy cost) it is difficult to define costs like this on the basis of them being connected with the surrogacy. What if a surrogate doesn't want to go on holiday after the birth but to put the money towards a bigger trip next year? What if she prefers to buy a new car instead (which will help her take her family on trips out)? What if a house extension would give them more space to re-bond as a family? While we think all this should be permissible if agreed on a clear and informed basis, we don't think it is helpful for people to have to shoe-horn what they want to do into acceptable categories, and it is more straightforward and transparent to agree a compensatory sum which the surrogate can spend on whatever she wishes.

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, intended parents should be able to pay the surrogate her actual lost earnings (and those of her partner).

It may be difficult to quantify actual lost earnings if the surrogate or her partner is self-employed or receives a variable income of any kind. This is not problematic if the category is guidance, since the parties can simply agree a daily rate which seems fair (or whatever alternative quantification method they prefer). However, if it sets a boundary as to what is lawful there will need to be a detailed legal definition of what is and is not permissible.

85 Consultation Question 77:

Please provide your views below:

Yes, in line with our view that all payments should be permissible, we think that intended parents should be able to pay the surrogate (and her partner) lost earnings potential if they wish.

However, we think that this is a potentially problematic category because potential earnings are so uncertain. Guidance in the HFEA Code of Practice should therefore encourage a clear accounting approach and/or a cap to ensure that everything is clear what they are committing to.

86 Consultation Question 78:

Please provide your views below:

We have limited experience of benefits issues in practice since none (or almost none) of our Brilliant Beginnings surrogates receive means-tested benefits, and this is an issue we have had limited direct involvement in from a legal perspective.

However, we understand that it is a significant concern for other UK surrogacy organisations which support many surrogates who are on benefits, and who are concerned about managing loss of entitlement. We therefore have two suggestions for resolving this:

• The law could provide that all payments made in accordance with a surrogacy agreement endorsed under the UK pathway are not classified as income or benefit for the purposes of taxation or benefits entitlement. This would be similar to special arrangements in place for other types of payments for social good, such as fostering payments. There would then be no loss of benefits in a surrogacy case. This would be our favoured option, and we think it is justified on public policy grounds given the wish to encourage and support UK surrogacy.

• Alternatively the HFEA Code of Practice could help surrogates who receive benefits achieve clarity by requiring the agreement to be drafted in such a way that payments would be defined in categories which would be understood and accepted by the benefits agency. This would give allow surrogacy teams to choose whether to:

• agree financial terms within allowable categories, with confidence that the surrogate's benefits entitlement will not be affected, or

• agree payments outside those categories and plan for any lost benefits appropriately (as they do for lost income).

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, in line with our view that all payments should be permissible, we think that intended parents should be able to pay the surrogate (and her partner) compensation for all the items set out (and anything else they wish) and that the amount should be left to the parties to negotiate.

The list looks like it would cover anything for which compensation might be paid, other than an inconvenience fee for expressing breast milk for the intended parents after the birth which we have also seen paid in practice.

We do not think that it possible for a compensatory figure to be set by a regulator. Regulation will only control the pre-conception steps necessary to comply with the pathway and will not have control over what happens afterwards since, unlike in gamete donation, the parties have a direct relationship and manage payments between themselves. We cannot see how a regulator would be able to apply any sanctions if any cap was exceeded, and we are concerned about creating rules which are not enforceable (see our response to Question 87). The principle effect of the regulator stipulating a 'capped' figure for compensation would be to limit what could be recorded in the written agreement which is signed off by the regulated organisation. However, there would be an obvious risk of payments being made outside what was recorded with no way of the regulated organisation knowing or controlling that. That could significantly undermine the safeguarding effect of having a clear written agreement.

Please provide your views below:

Please see above answer to question 79 (1.102)

left to the parties to negotiate.

Please provide your views below:

Please see above answer to question 79 (1.102)

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, in line with our view that all payments should be permissible, we think that intended parents should be able to pay compensation for death. It is already routinely expected for intended parents to pay for wills and life insurance so we doubt this will be controversial.

89 Consultation Question 81:

Please provide your views below:

Yes, in line with our view that all payments should be permissible, we think that intended parents should be able to pay the surrogate (and her partner) whatever gifts they choose (and vice versa). We do not, however, think this is a category of payments which should be included in the agreement since the essence of gifts is that they are gratuitous and often spontaneous. They should therefore be outside the surrogacy agreement and not subject to any regulatory control.

Our legal experience is that the High Court does not consider that gifts are caught by section 54(8) at all (since they are not made 'in consideration of' the handover of the child etc). Therefore, it is permissible under the current law to pay gifts of any amount and this does not even need to be authorised by the court to make a parental order. Any new restriction would be a retrograde step and we do not think it is reasonable, or possible, for the law to seek to regulate gifts. Saying they must be 'modest' will simply create anxiety about what is lawful, rather than allowing natural gift-making within a close emotional relationship which people feel is appropriate.

This was one of the areas which intended parents expressed to us was particularly anxiety-provoking. One of our Brilliant Beginnings parents told us that every time he bought a cup of coffee for his surrogate, or wanted to do something nice for her children, during the surrogacy process he felt anxious about the impact it might have on the parental order. He said: "We had a very profound emotional relationship and to think that the state interfered in that and said whether or not we could buy her a present was ridiculous and intrusive."

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, in line with our view that all payments should be permissible, we think that intended parents should be able to pay the surrogate a fee for her gestational surrogacy services if she wishes to receive one. We do not think there is a significant distinction between paying compensation for the pain in inconvenience of pregnancy or a fee for gestational services other than in the labelling:

• Every one of the Brilliant Beginnings surrogates we consulted said that they thought the payment of a fee should be a surrogate's choice and not prohibited by law, even though they gave mixed responses as to whether they would personally want to charge a fee for their services. One surrogate said: "Ultimately a surrogate can decide for herself if she feels a fee for her service is something she wants to include, and she should not have justify this to anyone." Another said: "There needs to be room for choice and the law needs to be realistic." Some felt that strongly this issue went to the heart of the law needing to recognise that surrogates were autonomous women who were able to make their own rational choices.

• Both surrogates and intended parents were frustrated with the perceived dishonesty of the current system, which they recognised actually does allow reward payments already. One surrogate said: "I did something I wanted to do and the expenses benefited me, given that I didn't have to use them on actual expenses. If I had then I would have felt that it was a lot to do for very little over the two year period my life was affected." An intended parent said: "We paid a fixed amount of £15,000 because that was what we felt was fair, and I could never get my head around the fact that the law said that was ok but also said that we should only pay expenses but we all knew that it couldn't be justified as actual expenses".

We think that the amount of any fee should be agreed freely between the parties. For the reasons set out in our response to Question 79, we think it is

impractical for an amount to be set by the regulator.

We think the parties should be able to choose whether any fee is paid in addition to other categories of expenses or not:

• It is commonplace in UK surrogacy for a lump sum to be agreed which is a mix of expenses and a fee/compensation. This is mainly as a result of COTS policy, which has filtered out to independent groups as well, and is the origin of the believed accepted amount of £12,000 to £15,000 which is often talked about. Even disregarding the problems of enforcement, we do not think it would be appropriate to stipulate a figure like this for everyone (inclusive of expenses), since surrogates' circumstances differ and some may have expenses which exceed this figure. We think there should be choice.

• In practice, we would anticipate that if a fair sum could be freely agreed as a benefit to the surrogate (whether titled compensation or a fee) most teams would limit the expenses to a narrower range than is currently paid. By comparison in the US, the itemised expenses are typically £1,000 to £3,500 and the compensation is the much larger amount.

any sum agreed between the parties to the surrogacy; or

Please provide your views below:

Please see above answer to question 82 (1.107)

Please provide any views below:

Please see above answer to question 82 (1.107)

91 Consultation Question 83:

Please provide views below:

Any compensation for inconvenience, or fee for gestational services, should be appropriate to the surrogate's effort and time. It should therefore be permissible for the amount to be reduced if she miscarries or the pregnancy is terminated early, although possibly not after a certain stage of pregnancy.

Given international law rules prohibiting the sale of children, we think that the law should also say that any compensation or other payments agreed to be paid to a UK surrogate relate to her effort and inconvenience and are therefore due irrespective of whether a healthy child is delivered or handed over (this can be part of the provisions on enforceability).

some other period of time (please specify in the box below).

Please provide your views below:

Any compensation for inconvenience, or fee for gestational services, should be appropriate to the surrogate's effort and time. It should therefore be permissible for the amount to be reduced if she miscarries or the pregnancy is terminated early, although possibly not after a certain stage of pregnancy.

Given international law rules prohibiting the sale of children, we think that the law should also say that any compensation or other payments agreed to be paid to a UK surrogate relate to her effort and inconvenience and are therefore due irrespective of whether a healthy child is delivered or handed over (this can be part of the provisions on enforceability).

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:

Without any proposals to change the parental order framework in relation to payments, we assume that the Law Commission envisages retaining the court's power to 'authorise' payments outside the permitted framework. That must be the case since otherwise all international surrogacy cases would be excluded from parental orders, and that is clearly not envisaged. As we have seen from extensive case law, the power of authorisation is exercised routinely in the majority of surrogacy cases and is no longer controversial. What the parental order framework 'permits' is therefore not just expenses reasonably incurred but whatever payments are agreed between the parties.

If there is to be parity within the new pathway, all categories of payments should be permitted.

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:

We think the categories are a good summary from which nothing has been obviously omitted however this should never be the exhaustive or definitive list.

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 think that surrogates and intended parents should be free to make whatever financial arrangements they consider appropriate, whether by allowance or itemisation and in any of the categories the Law Commission has set out. Some surrogates want to benefit and many intended parents want to support that, and they should have the choice to do so.

We think the focus of the law should be on avoiding exploitation (through the pre-conception steps in the pathway and judicial oversight outside it) and on encouraging clarity and transparency which minimise the risk of communication difficulties during the surrogacy process.

We think the Law Commission's categories are helpful guidance, and should be used (through the regulation system) to help surrogates and intended parents consider everything and put in place a clear written agreement. The HFEA Code of Practice could therefore require licence-holders, before certifying compliance with the pathway, to ensure that the written surrogacy agreement properly addresses all the key issues which the regulator identifies as being important. As well as financial arrangements, this would include things like how decision-making will be managed if there needs to be a termination, the numbers of embryos to be transferred etc.
Feedback from our community of surrogates and intended parents:

• The Brilliant Beginnings surrogates and intended parents we consulted welcomed the Law Commission categories, which they thought would be useful practical guidance to aid surrogacy teams in their discussions around the financial arrangements. One surrogate, who had previously been a surrogate outside Brilliant Beginnings, felt that the ethos of keeping expenses as low as possible at Surrogacy UK had meant that when difficulties arose during the pregnancy she had been left to cover the unanticipated costs. She thought that the thoroughness of the Law Commission categories would help prevent this for others.

• None of those we consulted thought that any of the categories should be prohibited by law. One surrogate said: Is it in the best interests of the child or surrogate or parents to have it itemised or limited? No." Another surrogate said "I think everyone involved should just be better protected. Perhaps there could be some guidelines around payments that provide help to IPs budgeting and people considering becoming a surrogate to help them assess what might be involved. To me each IP and each surrogate are going to have circumstances unique to them so I think ultimately it should be a decision made together so that everyone feels comfortable."

• Intended parents felt that, with the introduction of regulation, there was no justification for setting a limit, and that it would not be enforceable anyway. One said: "The pathway will ensure that women are not exploited so why is the state enforcing a limit. What is the justification? With the ability of the state to enforce this being zero."

• There was also considerable frustration about the prominence of a small group of surrogates at Surrogacy UK arguing for a restrictive framework. One surrogate said: "We really need to change the conversation". An intended parent said: "A small body at Surrogacy UK are forcing their dogma on generations to come."

Practical analysis of managing payments from our Brilliant Beginnings experience:

• Payments is the most problematic issue for UK surrogates and intended parents. People don't like to talk about money, and it can be challenging to get them to agree details clearly. However, the risks associated with not doing so are enormous, and we have seen communication difficulties arise in practice due to lack of clarity. We find that the problems are exacerbated by anxiety around the parental order and the fact that agreements are written by the parties themselves without legal precision.

• We are occasionally approached by surrogates who appear to be primarily motivated by financial gain, but they very quickly screen themselves out of the process once they understand the level of time, commitment and effort involved. We find that surrogates who are not motivated by altruism and the desire to help someone else simply do not proceed. However, some surrogates do also expect some financial benefit, often in wanting to benefit their own families, and these typically agree an overall sum which is for more than their actual expenses. We support informed choice and we promote openness and transparency.

• We deal with a large number of US surrogacy agreements where compensation is paid more clearly. Agreement over the financial element is usually straightforward – there is a compensation figure plus a modest monthly allowance for expenses (usually $200) and a small number of identified expenses specifically reimbursed (lost earnings, prescription charges), all of which is set out transparently in the lawyer-drafted agreement. Payments are then managed through an escrow account so the parties do not need to administer them themselves and the surrogate has security that her costs will be paid. This system results in significantly less anxiety, confusion and miscommunication than the UK framework.

• We also deal with Canadian surrogacy arrangements where the law criminalises the payment of more than expenses and we see similar difficulties to the UK. Agreements commonly set a 'capped fee' which the surrogate is supposed to show receipt-evidenced expenses to claim. However, there is no oversight of the payments after the agreement is made, and in reality the expense figure is always paid in full on the basis of the surrogate producing receipts showing that all her household outgoings (not just expenses relating to the surrogacy) exceed this. We were also involved in a case in which an agency put forward a surrogate who was asking for significantly higher than normal sum on the basis that the lawyers drafting the agreement would be told one figure and the rest would be paid outside it. Interestingly the surrogate ultimately withdrew from the process when pressed about the validity of this.

• We see no evidence that the payment of compensation adversely affects the quality of the intended parents' relationship with their surrogate. Our intended parents who go to the US usually form very close bonds with their surrogates, just like those going through UK surrogacy, and US surrogates are typically motivated by the desire to help and form a relationship in a very similar way to UK surrogates. In one case we dealt with, a US surrogate surprised the parents with a letter which was read at their final parental order hearing by their judge saying how grateful she was that she had 'expanded her family by three'. The quality of relationships in US surrogacy is supported by the research we did with Cambridge University which showed (V Jadva, N Gamble and H Prosser, Parents' relationship with their surrogate in cross-border and domestic surrogacy arrangements, Fertility and Sterility, March

2019).

• The Surrogacy UK model is more restrictive than the law currently allows. We do not think there is any justification for what is a policy decision of one surrogacy organisation becoming a legal requirement for everyone, however vocal their advocates. There are many quieter and more moderate surrogates and intended parents outside Surrogacy UK who feel differently but often feel unable to express their views openly. We should also not discount the unknown voices of potential future surrogates who might come forward in a more liberal system.

• We are mindful that Surrogacy UK is very open about the fact that the majority of its surrogates (we understand 90%+) are on means-tested benefits. It is easy to understand why such surrogates may not want their payments to be classified as anything other than expenses since it could affect their benefits, incur additional costs for their intended parents (in covering their lost income) and inconveniently require them to withdraw and reapply for benefits. However, that is not a justification for dictating that this should apply to everyone, and the benefits issue does not reflect the experience of Brilliant Beginnings surrogates. We also think that, if the state is in reality providing women means-tested benefits while they receive payments for surrogacy, that should be managed more openly and transparently (see our response to Question 78).

• When we first set up Brilliant Beginnings, we took great effort to adhere to the law by ensuring that we only gave guidelines rather than being prescriptive in relation to expenses. We have always ensured that clear budgets are set and understood and that a baseline for dealing with the unpredictable elements of a pregnancy and surrogacy are addressed. We help surrogates understand their expenses at the outset before they are matched so that intended parents are both able to afford whatever those costs might be, but are also able to budget, and none of our surrogates are ever left out of pocket. We allow people the space to agree a top up or an overall lump sum if they want to accommodate some compensation, although we give both surrogates and intended parents separate independent legal advice so they can understand the implications of whatever they agree for their parental order. The payments are again evaluated against the reality around the 20 week pregnancy stage and then again post birth. At every juncture, there is discomfort and hesitancy with what has been paid/ or received in spite of the fact that every journey has never mirrored another.

• We have also heard the argument that a child born through surrogacy where payments have been made would feel sullied and their self-esteem affected. This does not reflect our experience, in the context of having worked for many years with intended parents engaging in compensated surrogacy arrangements in the US as well as those compensating surrogates in the UK, and it is not reflected in the research done by Cambridge University which has included children of commercial surrogacy arrangements overseas. It is obviously key that the words surrounding the story of how a child comes into the world needs care to reflect the true sentiment behind conception and pregnancy but this can be managed well, and in practice we see parents talking about balance in surrogacy relationships where each side is able to benefit and support the other's family.

Legal analysis from NGA Law:

• All the categories of payments set out by the Law Commission are already lawful and routinely paid within the existing UK legal framework. We have dealt with hundreds of international surrogacy cases involving commercial surrogacy arrangements in which payments have been retrospectively authorised. This is now so routine (and based on such clear case law) that the exercise is near-meaningless, and simply creates an evidential burden for applicants. In UK surrogacy cases heard before magistrates, payments are hardly ever queried even where no justification or breakdown is given. It is common for teams to agree a lump sum (usually of £12,000 to £20,000) which is for more than just expenses. We are from time to time asked by intended parents 'what figure the court would like to hear' and we suspect that there is a significant amount of non-disclosure. We have had three cases (roughly 1/100) in which payments were queried by the CAFCASS officer (one being the non-disclosure case of Re A, B and C (2016)). In all the payments were authorised by the court. Any restriction of payments is therefore both unenforceable and unenforced.

• We think more realistic law which encourages openness, clarity and transparency is a much better way forward. While the Law Commission's categories will be useful as guidance, if any categories are prohibited by law the definitions become critical and there is a significant risk that we simply replace one complicated and blurred division with several.

• We think the real underlying concern here is the worry that women may be exploited if given a financial incentive to enter into an arrangement which they later regret or are harmed by. However, the protective measures being introduced through regulation and the pathway will significantly promote informed consent and minimise risk, and we think this is an appropriate justification (as well as realism) to taking a more realistic and liberal approach to payments.

95 Consultation Question 87:

Please provide your views below:

We do not think there are any methods of enforcement which will successfully limit payments to surrogates. This reality needs to be understood and accepted so the law can focus on protecting all involved by promoting clarity and transparency and ensuring informed consent.

In respect of cases outside the pathway:

• Most cases outside the pathway will be international surrogacy cases. It is not possible for UK law to regulate what surrogates in other countries can be paid.

• The status quo is untenable. Although the family court is supposed to regulate payments, it does not do so since the parental order is considered after the event in the context of an application in which the child's welfare is the court's paramount consideration. We have extensive and established case law addressing the 'irreconcilably conflicting' legal task judges are given and articulating that a parental order could never be refused. We also now have a legacy of hundreds of cases in which payments have been authorised and none in which a parental order has been refused. If the law is being brought up to date, we cannot knowingly retain legislation which serves no purpose and has been demonstrated and declared to be unworkable. The idea that the family court can regulate payments is a fiction.

• Criminal sanctions for parents and surrogates were (rightly) rejected in 1985, as being something which might taint the conception of a child. We do not think anyone is proposing that they be introduced, but we would oppose this as being draconian and unjustified.

• The reality is therefore that it is not possible to enforce limits on payments made to surrogates in cases which fall outside the pathway.

In respect of cases within the pathway:

• We question whether there is any logical justification for the law being enforced only in those cases where safeguarding steps have been followed which better protect against exploitation, and not in relation to international surrogacy arrangements and UK surrogacy arrangements outside the pathway where there are no such protections. This feels like a double standard.

• We do not think there is any effective means of enforcing restrictions in the pathway either. The options would seem to be:

1. Regulatory control – In gamete donation, limits on payments to donors are enforced through the HFEA licence control of regulated bodies. However, in gamete donation licensed bodies have complete control over the donation process and act as an intermediary between parties who have no direct contact. That is not the case in surrogacy. A regulated surrogacy organisation will have some involvement in a surrogacy up to the point where the agreement is signed off. However, both before and after, the parties will have a direct relationship and will be responsible for making payments privately between them. As individuals, they are not subject to regulatory control. Therefore any attempt to enforce limits via regulation will likely only really dictate what can be told to the regulated surrogacy organisation (and so what is included in the surrogacy agreement), and not what is actually paid. We would be concerned about creating a system which effectively incentivises written agreements which may not reflect everything the parties have agreed, and which injects a possible secret into a highly-charged emotional relationship. We think this presents a very significant risk to the protective value of the pathway steps, and so may be counter-productive.

2. Disqualification from the pathway – It is difficult to see how this would be triggered unless the parties were so honest in their agreement that they effectively volunteered themselves out of the pathway. If there is ongoing oversight of payments made, it is unclear how that would be done and who would do it. Again, there would be incentive for payments to be made off-record. We would also be concerned that certainty in respect of a child's parentage could be undermined, for example if someone (perhaps one of the parents following a separation) raised an issue later about payments having breached the rules so that parenthood was not conferred in the absence of a parental order.

3. Criminalisation – There has been some suggestion that a 'softer' method of enforcement might be requiring the parents to sign a statutory declaration when registering the birth confirming that they have only made permitted payments. This is still effectively criminalisation, which we reject as draconian and unjustified, and something which may taint the birth of the child.

96 Consultation Question 88:

Yes

Please provide your views below:

We agree that the financial terms of a surrogacy agreement under the pathway should be enforceable by and against the surrogate.

Other

Please provide your views below:

We agree that payment of expenses incurred should be payable regardless of any terms concerning lifestyle. However, we do think there may be a case for financial sanctions in respect of any purely compensatory element in some circumstances, for example where a surrogate knowingly ignores an agreement not to travel outside the country in the late stages of the pregnancy, and this results in the child being born overseas and very significant medical and legal costs for the intended parents as a result.

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 – this is not for us.

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 – this is not for us.

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:

As part of NGA Law's legal services we advise on and apply for British nationality registration and/or passports for children born through surrogacy, and we have dealt with 53 such applications. We are also aware of what happens in cases where parents apply themselves from the country of birth, since immigration delays often affect the parental order application which we are managing.

Our experience of the process of obtaining British nationality/passports in surrogacy cases is as follows:

Surrogacy in the US/Canada

All children are born American/Canadian citizens and so UK parents almost invariably apply for a US/Canadian passport and use this to travel home. They usually return home 1-4 weeks after the birth with no official UK documentation. Although technically the children have no right of entry (since they are not US visitors), this is tolerated by Border Control. Of the hundreds of US/Canadian surrogacy cases we have been involved in, 95% follow this route and no parents have been denied entry at the border. However, lots feel anxious about their child's lack of rights on entry, and a few have been questioned at the border and made to feel very uncomfortable.
Since the grant of a parental order will confer British nationality and should make a UK passport application straightforward, the standard advice is to wait until the parental order is granted to apply for a British passport. However, some parents choose to apply for British nationality/passport separately, either because they want a British passport for their child more quickly or because they are not applying for a parental order (e.g. non-biological parents, non-domiciled British parents and, historically, single parents).

In these cases it works as follows:

• If the child is born British by descent (typically where the biological father is British other than by descent and the surrogate is unmarried), we can apply for a British passport directly. The Passport Office states that it expects to see extensive original documents relating to the surrogacy, but in practice we see enormous variety in what documents are required. In some cases applications are granted smoothly even where the documents on the list cannot be provided; in others, the Passport Office requests additional documents not on the list.

• If the child is not born British (for example where the surrogate is married or where we are applying on the basis of the mother/non-biological father being British) we first need to apply to the Home Office for British nationality registration. Applications usually fall under the Home Office's discretionary power, but sometimes are as of right (e.g. where the biological father is British by descent). We have never had an application refused, and have made applications in cases both where the policy criteria apply and in a few where they do not. The nationality policy is incredibly complicated to follow. There seem to be no underpinning policy principles and no alignment with wider surrogacy/family law in respect of the language or requirements, which are different depending on whether it is the biological father, mother or non-biological father who is British. The policy is then overlaid by another very complex set of rules if the parent is British by descent.

We have also dealt with a number of US surrogacy cases in which parents have experienced difficulties obtaining a British passport application after the grant of a parental order. In one, an application was wrongly rejected by the Passport Office on the basis that the child was not British because the surrogate was married. Since a parental order makes a child British if either of the parents is British, the only supporting evidence needed is the parental order and evidence of either parent's British nationality. However, the Passport Office do not seem to understand this and frequently ask for now-irrelevant documents e.g. evidence relating to the surrogacy or to the child's grandparents' circumstances.

Timescales are variable but much quicker in US/Canadian surrogacy cases than in ones involving other jurisdictions (approximately 3-6 weeks for each application).

Ukraine/Georgia

In Ukraine and Georgia, the child is not entitled to nationality of the country of birth. Therefore, there is no local passport and no easy route home which circumvents the need to first make a British passport application (unless, as is sometimes the case, the parents have other EU nationalities).

We dealt with the case of Re X and Y (2008) in which the Ukrainian surrogate was married and the children were born stateless (and in which we applied for a visa outside the Immigration Rules). The case had a lot of publicity, and Ukrainian and Georgian surrogacy service-providers became wise to the need to match British intended parents with unmarried surrogates. Since the case of Re IJ (2011) (which also involved a married surrogate) we have therefore not seen any Ukrainian/Georgian surrogacy cases in which the surrogate was married.

This means that the usual route home for UK parents with children born through surrogacy in Ukraine or Georgia is a British passport application on the basis that the child is born British by descent via a British father.

This has applied in all the cases we have dealt with, bar one in which the intended mother, but not the father, was British (these parents could not apply for British nationality registration since there is no court orer in the Ukraine, and instead applied for a visa).

The process of obtaining a British passport in Ukraine/Georgia is lengthy, taking 3-5 months on average even if managed efficiently, and it must be made in Ukraine/Georgia which means that parents make the applications themselves.

We have also experienced the Passport Office not understanding the impact of a parental order in this context. In a recent case we have dealt with, the parents had tried to apply for a British passport in Ukraine but were unable to produce the extensive (original) identity documents for their surrogate requested because they were no longer in contact with her. They therefore obtained an alternative EU passport to which the child was entitled which they used to travel home and then applied for a parental order. When we subsequently re-applied for their child's UK passport after the parental order was granted, the Passport Office was extremely difficult, insisting that the documents from the surrogate had to be provided and asking us to file all the evidence which had been provided to the High Court so the Passport Office could decide whether the parental order had been properly made (which we

successfully opposed).

India

Although Indian surrogacy cases are now largely historic, they were very common in the past. Most parents applied for British nationality/passports themselves given the need to make the application in India. We had repeating experience that it was very difficult to establish to the Passport Office's satisfaction that a surrogate was unmarried, and so it became standard practice to apply to the Home Office for British nationality registration first even if strictly speaking that was not required.

Applications took an enormous amount of time (up to 19 months, in our experience) and this was the cause of considerable distress to new parents. The main delay was in the passport stage, with British nationality typically granted within a few weeks of the application being made.

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:

We agree that it should be possible for a file to be opened prior to the birth in order to reduce delays, and we would suggest that it should be possible to open the file for both this application and the passport application prior to the birth (even if the child will not be born British) since the principal delay in dual-application cases is in the second passport stage. However, we think that if the visa rules are improved, this may be the better solution for getting newborn born through surrogacy overseas home promptly.

In respect of British nationality we also have some further comments. Although the Law Commission has not recommended any changes to British nationality law we do not think that is feasible in light of the Law Commission's wider proposals, and that the following amendments (at least) should be considered:

• Section 50(9) and (9A) British Nationality Act 1981 will need to be amended to include legal parents via the pathway in the definitions of 'mother' and 'father' so that parents through surrogacy are able to transmit British nationality to their child in the same way they would if their child was not born through surrogacy. This is particularly important given that there will be no parental order, and so a burden to apply for British nationality registration (which is much more expensive than a parental order) could in some cases be inadvertently imposed on families through UK surrogacy who would not otherwise have had to do this.

• Similarly, the definitions should be amended to include parents who are recognised as legal parents because their surrogacy took place in a country recognised by the Secretary of State's power. (We appreciate that this will be slightly different to recognised overseas adoption orders, but we think this is justified given that surrogate children are the parents' natural children).

• If a policy decision is made to provide that a surrogate's spouse is not a legal parent at birth, this should be reflected in the section 50(9A) BNA 1981 definition of 'father' as well as in the HFEA 2008. In non-pathway and non-recognition cases, this would enable the biological father to pass on British nationality irrespective of whether the surrogate is married, ending the arbitrary distinction related to marital status and the related evidential burden for parents.

• Section 50(9A) has previously been amended to include people who are now recognised as legal parents by virtue of the Human Fertilisation and Embryology Act 2008, so such changes are not unprecedented and do not require a wholesale review of British nationality law.

• We also think that, where British nationality registration is required, surrogate-born children should be able to be registered as of right, rather than by Home Office discretion, and that the policy should be re-written to make it clearer and policy-based. We would suggest that it simply says that where a parent through surrogacy who is British (and would otherwise be able to transmit British nationality to a child born abroad) is a legal parent of a child in the country of birth (evidenced by a birth certificate, court order or affidavit from a lawyer) his or her child will be registered as a British citizen. This is essentially what the policy already provides, but simpler.

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:

There is provision for a visa application made outside the Immigration Rules under a specific surrogacy policy. To obtain the visa, parents have to show that they intend to apply for a parental order and are likely to be granted one. To the best of our recollection, this has only been used in four cases of ours: Re X and Y (2008), Re IJ (2011), one early US case (approx. 2010) and a recent Ukraine case in which the intended mother was British but the father was not. The applications took 6-12 weeks to process.

102 Consultation Question 94:

Yes

Please provide your views below:

Yes we agree that the current surrogacy visa should be possible to apply for pre-birth and should be formalised within the Immigration Rules. We also agree that the criteria should be reviewed to be more appropriate and to wider policy in relation to surrogacy and any changes to the parental order criteria:

• We have thought for some time that the visa process for surrogacy could be improved to allow pre-birth applications which could be approved promptly on birth to eliminate the delays bringing surrogate-born children home to the UK. Not only would this safeguard the welfare of children; it would also be joined-up in respect of encouraging parents to apply for a parental order to resolve children's nationality and parentage properly.

• We in fact suggested exactly this in March 2015 in a paper we were asked to write for the cross-border government working group on surrogacy. We are happy to send you this document, which sets out more detail about how this could work and the possible policy benefits, and which remains on point.

Other

Please provide your views below:

Please see above answer to question 94 (1.123)

Other

Please provide your views below:

Please see above answer to question 94 (1.123)

Not Answered

Please provide your views below:

Please see above answer to question 94 (1.123)

Please provide your views below:

Please see above answer to question 94 (1.123)

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:

We have no direct experience of applying for EU EFFs, but in line with other questions we would support pre-birth applications to enable speed of resolution.

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:

We have no direct experience of this.

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:

We wholeheartedly agree with this proposal. The current guidance is horrendously complicated and located across several different documents which in places contradict each other and even refer to section 30 of the Human Fertilisation and Embryology Act 1990 which has not been in force since 2010.

We think any guidance should be clear about the steps which should be taken to enter the UK with a child born through surrogacy in the UK, and the different routes to British nationality. It should take reflect family law accurately, both to the extent that family law provisions and processes affect nationality, but also in order to highlight wider issues which parents should be aware of in a joined-up way. Finally the guidance on the documentation which needs to be provided in support of each application should be set out clearly in one place.

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:

We do not agree. We propose that regulated surrogacy organisations should be able to ratify surrogacy agreements made in other jurisdictions if able and willing to confirm that the pathway steps have been properly followed:

• Brilliant Beginnings routinely works with parents going to the US and Canada for surrogacy, and these arrangements involve safeguarding measure which are at least as stringent as the pathway steps recommended for the UK. COTS and Surrogacy UK do not facilitate overseas arrangements, but they do work from time to time with intended parents whose embryo transfers take place at clinics outside the UK, usually because the parents already have leftover embryos stored there, or for reasons of cost.

• We think it should be possible for a regulated surrogacy organisation in the UK to be able to certify that an overseas arrangement (or an arrangement in which there are some overseas elements) has complied with the pathway. This would not be a light 'sign off' but would require the UK organisation to have proper oversight of the arrangement. The organisation would need to be able to confirm that medical screening had been carried out properly, and that independent legal advice had been given in all relevant jurisdictions. It would then itself carry out the criminal records check and the welfare of the child assessment, it would arrange implications counselling in the UK, and it would provide information for the national surrogacy register (recognising that it may not be possible to provide identifying information about gamete donors, but the best information available could be provided). Licencing conditions could control how this would work to ensure that arrangements properly complied with the pathway.

• This would have the massive advantage of introducing oversight of some international surrogacy arrangements upfront. It would incentivise parents to choose more ethical destinations (to avoid the need to apply for a parental order) and it would encourage them to take sensible steps which they might not otherwise do. In particular, parents who conceive through egg donation at overseas clinics are often not offered the kind of counselling which is routinely provided in the UK, and as a result are much less well prepared for the long term implications of sharing information with their child. By requiring the counselling to be done by an accredited UK counsellor as part of the pathway, such parents would be given this support.

• It would reduce the burden on the High Court to hear international surrogacy cases which are clear and straightforward.

• In policy terms, it would have a similar effect to the proposed Secretary of State power to designate acceptable jurisdictions with equivalent protections, but on a case by case basis until such a power is exercised.

• If those undertaking the surrogacy are not able or unwilling to enlist the support of the licensed organisation, or if the arrangement does not meet the appropriate pathway standards, they will fall out of the pathway and the PO route is available to them.

107 Consultation Question 99:

Yes

Please provide your views below:

We agree with this proposal subject to the following thoughts:

• We would urge the government to conduct a review promptly in order to create a 'designated list' as quickly as possible. We are conscious that this exercise may not be straightforward, given that law and procedure on surrogacy is enormously variable in different countries/states/provinces and it may take some time to assess which jurisdictions have systems which are 'at least equivalent' to the UK. That is why we propose that in the meantime individual arrangements can be ratified by regulated UK surrogacy organisations as being equivalent on a case by case basis (please see our response to Question 98).

• It is important to consider how recognition will affect the transmission of British nationality. Given that in such cases children would otherwise become British on the grant of a parental order where either parent is British, we would suggest an amendment to the definitions of parents in s50(9)(9A) British Nationality Act 1981 so that a person who is a parent in a recognised overseas surrogacy arrangement can transmit his or her British nationality to a child at birth as they would a naturally-born child.

108 Consultation Question 100:

Please provide your views below:

We have been involved in a small number of cases in which parents from outside the UK have had a child with the help of a surrogate in the UK. Most of these (approximately 5-10) have involved uncompensated surrogacy arrangements between friends/family, and the parents' countries have included Australia, Ireland, New Zealand, the US and Switzerland.

We have also been involved in two recent cases involving Irish same-sex couples who matched with UK surrogates via Facebook groups without having had a prior relationship. We are also regularly approach by intended parents from outside the UK who hope to access UK surrogacy because it is prohibited or too expensive in their own country (although we usually encourage them to look elsewhere).
At present the legal advice is complicated.

• If the parents intend to apply for a parental order, or no order, in their home country then they only need the surrogate's written permission (and a passport) to remove the child from the UK. In such cases the surrogate's legal motherhood may never be properly extinguished, and it is important everyone consents to this.

• If the parents intend to apply to adopt their child in their home country they need the permission of the court under the Adoption and Children Act 2002. We have not yet been involved in a case where we have made a section 84 application to the court.

We have no strong view as to whether there should be a 'removal' process for outgoing surrogacy cases, but we think it may be difficult to design since there is no consistency between the legal processes parents follow in the destination country.

Please provide your views below:

Please see above answer to question 100 (1.134)

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:

We are not employment lawyers, but are aware that a surrogate's partner is not entitled to claim paternity leave, even though he or she often needs this time to care for the surrogate and their own family post-birth. We would support an extension of paternity leave to include this on the basis that the wider family plays a pivotal role in the surrogacy and there is a need for time and support in the readjustment back to family life.

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:

We agree that self-employed intended parents (who do not receive maternity leave/pay) should be entitled to claim maternity allowance as they would if they were giving birth to a child (and that where there are two intended parents they should be able to opt for which parent qualifies). This would bring the law for self-employed people into line with the rights already enjoyed by employees.

111 Consultation Question 103:

Please provide your views below:

We are not employment lawyers, but are aware that adoption (surrogacy) leave commences from birth and know that this causes difficulties for some parents (particularly those with children born overseas, where they want to go out in advance of the birth to ensure they can be present). We would welcome leave being able to commence at an appropriate time, and for intended parents to have time off work, in line with the employment and maternity leave entitlements they would have if giving birth to their child.

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 area of law is outside our area of legal expertise, but in general terms we would encourage support for any intended mothers who are following induced lactation to have the same rights as other breastfeeding mothers.

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 provude your views below:

No response – this is outside our area of expertise.

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:

One of the important implications of legal parenthood is the succession rights it confers. We therefore welcome all the proposals which will confer legal parenthood immediately from birth or without delay afterward.

In cases where the intended parents will be recognised as the legal parents from birth, it will no longer be necessary for the parties to put in place specialist wills which specifically benefit (or in the surrogate's case exclude) surrogate children. This will save cost for intended parents.

To the extent that there will remain cases in which surrogate-born people may not have a secure legal connection with their parents for the purposes of inheritance (either temporarily or long term) we wonder whether there should be a right to bring claims under the Inheritance (Provision for Family and Dependants) Act 1975 to enable a disenfranchised surrogate child to claim what he or she should be entitled too. Similarly we wonder if there should be provision for a surrogate's natural children to be able to contest a share to a sharing going to a surrogate-born child and thereby reducing their share.

We are not experts in contested inheritance, or succession generally, so these are general thoughts rather than specific legal recommendations.

115 Consultation Question 107:

Please provide your views below:

We would like to see fair access to NHS funding for IVF treatment by parents who need the help of a surrogate to conceive.

• At present, there is almost no NHS funding for IVF treatment, which adds significantly to the cost burden of intended parents. If surrogacy is accepted as a legitimate form of family-building there is no reason why it should not be considered a form of fertility treatment eligible for funding like any other.

We think there is a need for greater education, understanding and inclusion of surrogacy in maternity and other health services, to ensure that all parties are dealt with appropriately and respectfully.

• We have been involved in a number of cases in which referrals have been made to social services by hospitals and midwives, not because there are any welfare concerns but simply because a child has been handed over to intended parents by the surrogate. This is incredibly distressing to parents, as well as being an unnecessary waste of public resources.

• We have also been involved in several cases in which hospital decision-making in the context of a difficult delivery or a termination decision has been inappropriate, either by excluding one party or by presuming there is a dispute of some kind between the parties when there is not.

Please provide your views below:

Please see above answer to question 107 (1.142)

Please provide your views below:

Please see above answer to question 107 (1.142)

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:

We think that the Law Commission should consider more far-reaching reform to parental orders for both domestic and international surrogacy cases:

• Many of the existing criteria have (rightly) been undermined by judges struggling to reconcile their duty to regulate surrogacy retrospectively and to safeguard the welfare of a real child, to the point where the criteria are now largely meaningless. Please see our responses to Questions 54, 56 and 57 in respect of the six month deadline, the relationship status requirements and the authorisation of payments. We think these criteria should simply be removed.

• We also think reform is needed to several of the other criteria. The fact that a surrogate cannot give valid consent until 6 weeks after the birth, and the requirement that the child has already been handed over to the applicants, both reflect the 1980s policy concern that women may not be able to make a reliable commitment to carry a child for someone else. With 30 years' experience we now have a much more sophisticated understanding of surrogacy, and understand that its essence is not the post-birth handover of a child but a shared intention to conceive a child. Since this is (commendably) at the heart of the Law Commission's recommendations concerning the new pathway, we think it is illogical not to recognise that elsewhere. Even if non-pathway cases warrant a higher level of judicial oversight, we do not think that means that they are not surrogacy cases.

• We therefore think that, rather than tinkering at the edges, law reform should look afresh at the criteria and process for a parental order, taking as its starting point the modern understanding that surrogacy is about shared intention. We therefore suggest that, when the court is considering making a parental order, it should be required to consider:

o whether the court has jurisdiction to make an order (based on the residence or domicile of the intended parent/s),
o whether the parties intended, at the time of conception, for the intended parent/s to be the legal parents of the child,
o whether all parties consent fully, freely and unconditionally to the court making a parental order (with the court having the power to waive consent if in the child's best interests), and
o the welfare of the child (this being the paramount consideration).
o There might also be criteria in respect of genetic connection and age, as the Law Commission proposes (we have said more about these elsewhere).

• In line with surrogacy being about shared intention, we think that a parental order should confer parenthood on the people who intended to be the child's parents when the child was conceived. We also think that it should be possible for the application to be brought by any of the intended parents, the surrogate or (if both intended parents have died) any guardian appointed for the child. This would enable legal parenthood to be confirmed at the request of the surrogate (if the intended parents fail to apply), or at the request of one intended parent in favour of the other (for example where one has died or they have separated). It would also enable legal parenthood to be confirmed posthumously in a case where both intended parents had died, so that the child's guardianship and inheritance rights could be properly conferred. This proposal would overcome the significant difficulties which arise where circumstances change (usually through death or separation) between the making of the surrogacy arrangement and the parental order.

• One key significance of our proposed criteria reform will be that it will be possible for the intended parent/s to make an application before their child is born. If the court is satisfied in relation to the criteria, it could make a pre-birth parental order, giving the child legal resolution from birth. Note that the order would only confer legal parenthood from the time of birth so this would not affect the surrogate's bodily autonomy during pregnancy. However, the

court could also defer making an order until after the birth, giving scope to interrogate the surrogate's consent and investigate the child's welfare in more depth.

• In terms of procedure, we think that on issue of an application the court should automatically make directions in writing for the filing of evidence and a CAFCASS safeguarding report. We think that the welfare assessment carried out by the court should be proportionate: a basic safeguarding report as standard (which can be done pre or post birth), and a more thorough CAFCASS welfare report (which would have to be done post-birth) only where there is a justification.

• The court should then consider whether to make an order at the first hearing after this evidence is filed. Further hearings and/or a full (post-birth) CAFCASS welfare report should only be ordered by the court where they are needed. This would streamline the process, make the investigations more proportionate and significantly reduce delay for the child.

• We appreciate that the possibility of a pre-birth order goes further than the Law Commission is currently recommending. We therefore wish to emphasise that, even if this suggestion is not adopted, the court process can still be significantly streamlined. We recently, at his request, prepared a document for Mr Justice Hayden who was considering giving guidance about streamlining the parental order application process within the existing Family Procedure Rules. He was concerned about delay in parents obtaining parental responsibility, and keen to highlight that CAFCASS reports were not always necessary (he often dispenses with them in practice via directions). He ultimately decided to leave any recommendations to the Law Commission, but requested a document setting out the legal basis for what he thought should be best practice. Our document set out that the court could make standard directions when a parental order application was issued (for filing of evidence and a basic CAFCASS safeguarding report), and that the court could then consider making a final order at the first hearing, unless it needed further evidence or a full CAFCASS welfare report (in which case it could aware parental responsibility at the first hearing on an interim basis). Such a procedural change in fact does not require any law change and is permissible within the existing law and family procedure rules, but it would be helpful if it could be set out explicitly in the court procedure rules. We are happy to send you an anonymised copy if it would be helpful.

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?:

Although we are not intended parents, we thought it may be helpful to give an overview of the experience of intended parents we have which are reflected in our responses.

NGA Law has advised (as paying clients) 1201 different sets of intended parents in relation to surrogacy journeys since 2009.

Brilliant Beginnings has advised or worked with 341 different sets of intended parents in relation to surrogacy journeys since 2013.

Together, the experience of these intended parents answers the questions above as follows:

• We have worked with families who have had children born through surrogacy in every year from 2001 to 2019 (with more expected).

• Approximately 1/3 of our cases have involved UK surrogacy arrangements (including surrogacy arrangements with Brilliant Beginnings, COTS, Surrogacy UK, the British Surrogacy Centre, other now-historic agencies, and independent arrangements).

• Approximately 2/3 of our cases have involved international surrogacy arrangements (including surrogacy arrangements in most US states and Canadian provinces, India, Ukraine, Georgia, Thailand, South Africa, Russia, Greece, China, Australia, the Philippines, Malaysia, Cambodia, Mexico and more). We routinely work with parents with multiple nationalities/connections and so work with lawyers throughout Europe and the rest of the world. We frequently work with ex-pat British clients living all over the world.

• Historically, a large number of intended parents going overseas for surrogacy were reluctant to apply for parental orders, although this has gradually changed over time (and many of the parents who did not were those going to India, which is no longer possible). We have also advised many parents who are not eligible to apply for parental orders, particularly single parents (historically), parents without a biological connection and parents who are not domiciled in the UK.

• We have worked with different-sex couples, male same-sex couples and single parents (of all genders, including transgender). We have only advised a couple of female same-sex couples considering surrogacy, and none we are aware who have pursued it.

Not Answered

Not Answered

118 Consultation Question 110:

international

Not Answered

Not Answered

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

Although we are not individuals, we thought it may be helpful to set out NGA Law's fees for legal advice and representation in surrogacy cases. We currently charge the following fixed fees (unless the case is particularly unusual, in which case we charge on a time spent basis – this is rare). Our fixed fees are all broadly reflective of time spent (other than our initial advice fees where we consistently make a loss against hourly rates):

For legal advice

£300 plus VAT – legal advice telephone/ Skype meeting (up to 1 hour) + confirmation to clinic we have advised.

£650 plus VAT – full legal review (1-2 hour meeting plus detailed letter of advice). This can cover multiple surrogacy options, family law, immigration/nationality and other practical issues, for either domestic or international surrogacy (or both).

The overwhelming majority of our clients seek advice prior to conception, and sometimes as a first step prior to settling on a surrogacy route. We also advise clients during the pregnancy, but it is rare for us to give first advice following the birth.

For parental order – domestic surrogacy

£2,000 plus VAT – support package (we prepare the evidence bespoke ready to file, and provide detailed instructions and documentation to support clients to manage the process themselves).

£6,000 plus VAT – legal representation (we manage the entire process, including preparing the evidence and representing throughout the application; our cases are finalised in one hearing 4-6 months post birth).

These services are optional for the parents who want additional support/handholding, and the majority of our clients feel confident to self-represent without them.

For parental order – international surrogacy

£6,000 plus VAT – basic legal representation service (we deal with the initial steps of the application, surrogate consent, initial preparation of the evidence and court bundle and give instructions to parents on how to manage the 2 hearings themselves).

£20,000 plus VAT – premium legal representation service (we manage the whole process, including full preparation of all the evidence and case management to resolve the application in the High Court in one hearing 4-6 months post birth).

Most of our clients opt for one of these services, although we also have a good number who self-represent on the back of an initial legal review (and sometimes we provide time-spent advice behind the scenes to support them).

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:

We think we have adequately answered this question elsewhere.

120 Consultation Question 112:

Please provide your views below:

In respect of medical screening and implications counselling:

Brilliant Beginnings carries out the following screening of surrogates prior to match.

We pay the third party costs of this (set out below) but absorb them within our overall fees charged to intended parents:

• GP letter for basic medical screening - £30 - £120 depending on surgery

• Psychological screening with a clinical psychologist - £600 plus any travel related costs for surrogate

• Implications counselling prior to match, just before giving birth and just after £60 per session. Where additional sessions are required, we often subsidise or this is agreed in advance with the intended parents

• DBS record checks for surrogate and anyone over 18 in her household – paid initially by surrogate and then reimbursed at match.

Full medical screening and implications counselling is then provided by the fertility clinic. These costs are charged by the clinic to intended parents.
In respect of legal costs:

Many fertility clinics already require the parties to have independent legal advice, and we provide a specific light-touch service for intended

parents/surrogates to satisfy this requirement for which we charge £300 plus VAT. This covers a one-off meeting/call of up to an hour, and confirmation in writing to the clinic we have done so.
We also offer clients the option of more in-depth meeting (often in international surrogacy cases where we also cover immigration issues). We charge a fee of £650 plus VAT which covers a 2 hour meeting and a detailed letter confirming our advice in writing.

We obviously do not currently draft surrogacy agreements, but comparably in known donation cases we currently offer:

• a template agreement which can be purchased from us for £250 plus VAT without any legal advice, or

• a full-service package which costs £2,000 plus VAT and includes a legal review meeting (up to 2 hours), a letter of advice confirming our advice in writing, and a bespoke drafted pre-conception agreement. NB. In respect of the surrogacy pathway this would cover both independent legal advice and the agreement. We would expect to charge this as a baseline for surrogacy, if permitted to do so. We would later review our time costs and would charge more (or less) for the enhanced service if the fixed fee was not a sensible reflection of our time at our usual hourly rates.

Please provide your views below:

Please see answer to question 112 (1.149)

121 Consultation Question 113:

Please provide your views below:

We think we have adequately answered this question elsewhere.

Please provide your views below:

We think we have adequately answered this question elsewhere.

122 Consultation Question 114:

Please provide your views below:

We do not think that anyone other than a regulated surrogacy organisation should be able to confirm that the pathway requirements have been met. Surrogacy organisations have unique skills and experience in surrogacy, and can be regulated appropriately by the licensing system to carry out their responsibilities to:

• ensure that other professionals have fulfilled their role (medical, legal, counselling),
• carry out criminal records checks and conduct a welfare of the child assessment,
• ensure that the agreement has been signed and completed properly, and
• provide information to the national surrogacy register.

To ensure quality and consistency, we do not think this role should be carried out by anyone without an HFEA surrogacy licence. Lawyers, medics etc could of course apply for this licence (provided they are either non-profit or are not providing introduction services).

123 Consultation Question 115:

Please provide your views below:

The biggest hurdle to accessibility to UK surrogacy is the imbalance between the numbers of intended parents and the numbers of surrogates, which creates a shortage of surrogates and uncertainty for parents about whether or when they will be able to find a surrogate in the UK. As highlighted by our research with Cambridge University the lack of UK surrogates is (together with a desire for legal certainty) one of the two main motivators driving intended parents overseas. We hope that the Law Commission's proposals will increase accessibility to UK surrogacy by encouraging more women in the UK to volunteer to become surrogates. We think the following proposals will impact positively on this:

• The new pathway to parenthood – this will give surrogates more security (they too worry about the risk of intended parents changing their minds as well as their legal responsibility for a child that is not theirs) but even more significantly we think it conveys to women that becoming a surrogate is a legitimate thing to do, because a woman's choice to be a surrogate is recognised and supported by the law.

• A more honest and liberal regime in respect of payments – while we do not think that money is a primary motivator for surrogates given the enormous commitment involved, we do think that more women will come forward as surrogates if they feel that they can be fairly and honestly compensated for their efforts. Dealing with the financial arrangements more transparently will, like the pathway, give confidence in the process.

• All the surrogates we work at Brilliant Beginnings have the unequivocal support of a partner, spouse or other family/friend at the centre of their support network. It is often these supporters who act as barriers seeing the vulnerabilities around legal parenthood and the lack of clarity around expenses and so are barriers to a surrogate moving forward. Understandably a surrogate will not want to derail a happy stable home life with her offer to become a surrogate and there can be no doubt that greater security will offer this to the surrogate's supporter and enable them to have the peace of mind necessary.

• Regulation of surrogacy agencies – we think the badge of regulation will give women confidence in the services provided by surrogacy organisations.

• Removing the ban on advertising – we think this will facilitate the promotion of safe regulated surrogacy organisation services.

The other major issue in respect of accessibility is cost. Surrogacy is already an expensive process, with a UK surrogacy journey typically ranging from £10,000 to £50,000 (including surrogate expenses, IVF costs where applicable, organisation fees where applicable, legal advice/representation, wills where applicable, life insurance, parental order court fee). However, surrogacy is also a delicate and emotional process with enormous potential consequences for a child if it is not managed safely, and there is justification for requiring certain safeguarding steps even if there are costs implications. Ultimately, in the absence of state funding, the issue is how far to offset cost with safety, and we think the Law Commission has struck the right balance. We do not think any of the proposals, individually or collectively, will increase costs by a significant amount. We also recognise that the recommendations reflect best practice already followed in the majority of UK surrogacy arrangements, and that surrogacy teams will always have the option of not following the pathway and instead applying for a parental order.

Please provide your views below:

Please see answer about to question 115 (1.153)

124 Consultation Question 116:

Not Answered

Please provide your views below:

Although we are not intended parents, we would refer you to the research we did with Cambridge University (V Jadva, H Prosser and N Gamble, Cross-border and domestic surrogacy in the UK context: an exploration of practical and legal decision-making, Human Fertility, December 2018) which surveyed several hundred of our intended parent clients who had been through domestic and international surrogacy arrangements, and which included questions about the overall and breakdown of costs.

Please provide your views below:

Please see above (2).

Please provide your views below:

Please see above (2).

Please provide your views below:

Please see above (2).

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

Please provide your views below:

Brilliant Beginnings has helped one intended parent in Northern Ireland but from time to time receives enquiries from either surrogates or intended parents from Northern Ireland. The practical hurdle that these people face is finding the appropriate services to support their journey without coming to the mainland. That said, there is no reason to think that the pathway should not encompass any surrogacy journey in Northern Ireland and would anticipate that there are already independent relationships taking place.

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:

We think we have adequately answered this question elsewhere.

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?

The Center for Bioethics and Culture

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

(Required – Choose one response)

- This is a response on behalf of an organisation (The Center for Bioethics and Culture and our StopSurrogacyNow campaign)

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 derive 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

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.

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

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

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

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 f 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

Paragraph 18.22

Response ID ANON-2V7F-Y8PH-E

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 11:29:51

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:

Church of Scotland Church and Society Council

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:
Church of Scotland Church and Society Council

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:

The Church of Scotland welcomes the opportunity to respond to the consultation on the law surrounding surrogacy in the UK.
Policy making in the Church of Scotland is governed by the General Assembly of the Church, which is the highest decision- making body within the church. While recognising that there is diversity of opinion on many matters within the membership of the church, decisions of the annual General Assembly determine official policy of the Church of Scotland. As such, this response is bound to reflect that policy.
This is a subject which requires great wisdom and compassion. Throughout human history, childlessness and the inability to carry children has been a devastating reality for many. However, in seeking to address this issue, the law must take care that it safeguards the needs of all involved- most especially, the mother and the child.
The topic of surrogacy is inevitably a controversial one, reflecting the fact that, at the heart of the matter is the creation of new human life, with the express intention, from the outset of the process, that the gestational mother will hand the child over to others, and she will play no further part in the parenting of the child whom she has gestated. While it is clear that the breaking of parental bonds is sometimes inevitable (through, for example, death), the deliberate, pre-planned fragmenting of parenting is at the centre of the surrogacy process. The physical, psychological and spiritual bonding between mother and child is therefore deliberately denied from the outset.
Surrogacy is, from the outset, about the detachment of children from their mother. The potential for emotional and psychological distress and harm, for both mother and child, is significant and should not be underestimated.
Surrogacy arrangements are almost always based on a financial exchange. This commodifies both the mother and the child, reducing them to objects, whose primary use (in surrogacy) is to satisfy the desires of other human beings.
There are many aspects of the proposals made in the consultation which we find troubling. Perhaps the most fundamental is the presumption, made explicitly in the consultation document, that "...we take as our starting point that surrogacy is an accepted form of building a family." However, as surrogacy is prohibited in many other countries, including France and Germany, this presumption of the acceptance of surrogacy is, to our mind, erroneous.
In addition, as the stated policy of the General Assembly of the Church of Scotland on the issue of surrogacy is one of opposition, we find ourselves unable to agree with this presumption, and are thus at odds with many of the conclusions which are drawn from this presumption in the consultation paper and the subsequent proposals which stem from this.

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:

The Church of Scotland is opposed to surrogacy in principle
We are also concerned by the proposal that the surrogate mother would not automatically be, as is now the case, the legal mother at birth until she relinquishes her maternal rights. Instead, it is proposed that, from birth, legal parenthood of the child would belong to the intended parents. The proposed legislation would place the burden on the surrogate mother to object, with only a very short timeframe for an objection to be raised. This is unjust because the surrogate mother – as with any birth mother – regardless of her plans during the pregnancy, needs sufficient time after the birth (which may have been physically demanding or traumatic), to process her feelings towards the child she has been caring for in utero for many months, and to decide whether she does indeed want to relinquish the child. This processing may require more than a few days or weeks.
The presumption of parenthood should always rest with the biological mother, and the law should not place an obligation on her to object to 'acquisition' of legal parenthood by the intended parents. Rather, she should be allowed, by positive action, to relinquish her parental rights and responsibilities, as is possible under the current approach to legal parenthood in surrogacy. The law cannot assume that surrogate mothers are always fully aware of the legal processes involved, and should strive to protect all from potential exploitation.
The expectation of almost immediate detachment from the child which she has carried for 9 months is not a reasonable expectation and should not, in our opinion, be legally endorsed. The surrogate mother is already in a weakened legal position with respect to the commissioning parents. This means that the surrogate mother will not always be able to ensure that she is fully respected and protected under the proposed new pathway. The new pathway proposed in the consultation does not give the same rights as previously for the surrogate to change her mind- especially if the child has already been physically taken away from her by the commissioning parents. The multitude of emotions around giving birth to a child should not be underestimated, nor should the amount of time that the surrogate may need to deal with these emotions and to decide if she would like to keep the child.

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 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:

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:

A consequence of the introduction of financial inducements to surrogacy will inevitably be, in our view, the potential exploitation of women who are socio- economically vulnerable. It is important that pregnancy should not be seen as "just another job" or as a means to financial gain. The draft proposals, if implemented, would have the effect of normalising commercial surrogacy, including advertising for and inducing women to sell their bodies and reproductive capacity.
With the proposed acceptance of commercial surrogacy there is also a risk of 'objectification'- that is, the treatment of a human being as a thing or an object, disregarding his or her personality and inherent dignity. This risk of objectification applies both to the mother and the child. It is because of such risks that Article 3 of the EU Charter of Fundamental Rights states that: "In the fields of medicine and biology, the following must be respected in particular … the prohibition on making the human body and its parts as such a source of financial gain". Similarly, the Council of Europe Convention on Human Rights and Biomedicine states in Article 21 that: "The human body and its parts shall not, as such, give rise to financial gain." Where surrogacy is a commercial agreement, the dignity of the child who is born as a result is violated through being, in effect, an object of barter.

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:

We are also very concerned about the proposed advocacy of international surrogacy arrangements. It should be noted that a number of jurisdictions which have previously served as 'hubs' for surrogacy tourism (for example Thailand and Cambodia) have recently rejected this practice due to concerns over the exploitation of women and have now regulated or are in the process of regulating surrogacy. Perhaps most notably, the Indian parliament has passed a bill which forbids commercial surrogacy and prevents any foreign nationals from using an Indian woman as a surrogate. It is instructive that a country which has experienced first- hand the devastating effects of commercial surrogacy has now introduced legislation to end it, in order to protect women from exploitation

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?

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 provude 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:

There are clearly implications for the proposed changes in relation to international treaties such as CEDAW (Convention on the Elimination of all Forms of Discrimination Against Women) and UNCRC (UN Convention on the Rights of the Child) which we feel are not adequately addressed in the consultation. In addition, as the CRC will be incorporated into Scots law, we are concerned as to how these changes will reflect this.

It should also be noted that, based on available evidence, it appears that there is a difference between the level of demand' for surrogacy services in Scotland and in England and Wales. The demand for such services in England is significantly higher than that in Scotland, possibly justifying the need for a separate legal approach to surrogacy in Scotland. The consultation paper fails to consider the possibility of Scotland adopting its own regulation of 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?:

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:

Pregnancy and childbirth are dangerous and traumatic. The consultation is very light on who has control of the woman's body and decisions during pregnancy- from things as simple as food or drink choices, to more complicated decisions around who gets to make choices around medicinal drugs or treatment including chemotherapy during the pregnancy. If the intended parents can enforce lack of treatment, forced pregnancy or forced abortion on women, this is a catastrophic violation of human rights. In addition, we have concerns around who takes care of the short- and long- term health needs of surrogate women once they have given birth.
While some women will be motivated to become surrogates for compassionate or altruistic reasons, the risks of commodification and objectification are very real when it is likely that, in many cases, it will be women most needing money who will become surrogates. Society would then be faced with the unacceptable situation where the long term use of human bodies, as such, could have a price.
It could also be argued that the inherent human dignity of a woman is diminished when she is induced to use her uterus for financial profit and is considered as little more than an incubator for somebody else's child. Moreover, since there are real medical and psychological risks inherent in gestating and giving birth to a child, no woman should ever be induced to undertake a pregnancy for another woman motivated by the exchange of money.
However, even when there is no commercial transaction in the surrogacy arrangement, there is still a risk of the woman just being considered as a kind of 'container' or 'incubator' divorced of any natural maternal relationships with her child. This situation is further complicated when double donation is involved, as the surrogate mother then has no genetic link with the child whom she is carrying.
During pregnancy a woman has already been investing in genuine maternal care, and therefore has rights and responsibilities as a birth mother which the law should reflect. Surrogacy objectifies this process and the human beings involved. Despite occasional reference to the best interests of the child who is born as a result of the surrogacy arrangement, we see little evidence of this concern for the child who will be brought into existence as a result of the surrogacy process. We are concerned that the consultation document is very much centred on the wishes of adults involved and, in particular, of the intended parents.

The General Assembly of the Church of Scotland has expressed opposition in principle to surrogacy. While we accept that there may be some merit in revising the current legal framework around surrogacy in the UK, we dispute many of the underlying assumptions in the consultation document and would wish to register our disquiet about many aspects of the changes which are proposed by this consultation. We are particularly concerned about the

potential for exploitation of women which will result from the introduction of commercial surrogacy in the UK. Any future work on this topic should consult with women's and children's organisations as a matter of urgency and a human rights based approach to surrogacy should be embedded in all future work.

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 Retired nurse, specialised in gynaecology and obstetrics

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.

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 childs 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.

1.15 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

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 f 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 childs 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 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-Y8UW-2

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 11:37:02

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 memberships but do participate in SUK and hope surrogacy forums and events

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:

Other

Please provide your views below:

There should be protections for international surrogacy to ensure no advantage is taken on either side. That may be through high court judge or through work with cafcass

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

I think domestic surrogacy is less risky because of the protections in place. In particular surrogacy within families. These can be allocated to the lowest level and handled most quickly

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:

It seems entirely at odds with proper and planned surrogacy that the surrogate carries an on going responsibility. This does not seem fair when they have chosen not to be a parent. Similarly it is problematic for IP's to have all responsibility for the life and welfare in practice and not 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:

Yes

Please provide your views below:

As per previous comments. This is usually a highly thought out process and it is odd that the parents do not have parental responsibility already. So I agree, the required for all involved is to have a written and agreed documentation

15 Consultation Question 8:

Yes

Please provide your views below:

100 years; or

Please provide your views below:

For the life cycle of the hike
Born through surrogacy

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:

Other

Please provide your views below:

I think this is more nuanced. A lot of surrogacy arrangements the embryo is made of both IP's and in these situations I believe the child should go to the genetic parents even if a surrogate changed their mind. However in a situation where only one of the IPS is the biological parent and the surrogate is also a biological parent, this would be shared parental responsibility in the case of an objection

20 Consultation Question 13:

Yes

Please provide your views below:

Positive safeguarding for the surrogate

21 Consultation Question 14:

Yes

Please provide your views below:

Health visitors etc will alert if there are concerns in the same way they would for any child

22 Consultation Question 15:

Yes

Please provide your views below:

No

Please share your views below:

It makes no sense to have the spouse as a legal parent just because they are a spouse. If the IP is a genetic parent they should be the parent

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 seems like an appropriate safeguard. However if they already signed to say they wanted the child to go to the IP's this must at maximum be light touch and is potentially over the top in terrible circumstances

26 Consultation Question 19:

Yes

Please provide your views below:

Please provide your views below:

The child should still be registered as the intended parents. Surrogates do not become surrogates to have a child. If they did they would have their own child. They should not be forced to bear the responsibility of the child they were carrying for someone else

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:

Not sure how this would work or why it is desirable. Best to go to the IP's. If 3 way then that should be for a fixed minimum term

29 Consultation Question 22:

Please provide your views below:

I don't think there should be additional oversight. But if there was it should be a matter for social services not the courts

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:

We are IP's and my sister in law is our surrogate. We had counselling individually and as a group through our clinic before testing took place. We were all tested for sexual health and genetic disorders. We sought legal advice and we drew up our own arrangement between us which we have shared with clinicians

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:

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:

I am not a fan of matching. I think the principles of friendship first should prevail

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:

Why this and why not cqc?

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?

No

Please provide your views below:

It is their entitlement to know. But this is a document seen by others and it is the right of child to share that information if they choose

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:

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?

Yes

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?

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:

Not Answered

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 don't think the law is complicated and it is causing expense where not needed. I am a lawyer and didn't feel I needed legal advice but had to get it to satisfy my clinic.

77 Consultation Question 69:

Other

Please provide your views below:

I think you need to be clear why this is needed and the sort of grounds where it could rule someone out

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:

Surely it is down to the individual and her health. I don't understand why a number should be put on this

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:

I don't think surrogates should laboriously be keeping receipts but if there is concern over costs they could be requested. I am open to allowances too but depends on the situation

Some things cannot be receipted such as loss of earning etc

81 Consultation Question 73:

Please provide your views below:

Anything which is outside what they would normally pay but also things incurred because of their altered life I.e childcare expenses etc.

82 Consultation Question 74:

Please provide your views below:

I think additional would be things like massages, a break away after the birth etc

83 Consultation Question 75:

Please provide your views below:

Ips should pay all 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:

I believe so. Our surrogate was self employed and did less hours in the final stages of pregnancy. This should be compensated by us. If the employer is paying then this should not be additional

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 sure on this. Surrogates enter the idea knowing the risks

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:

Again a surrogate has willingly entered this and the IP is not responsible for the pregnancy. I don't think they should be liable

89 Consultation Question 81:

Please provide your views below:

They should be able to and it is a deeply personal thing. But yes some guidance on reasonableness so it is not open to abuse is sensible

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 only works because it is altruistic. I haven't met s surrogste who wants to be paid and it runs the risk of abuse of less advantaged groups

Not Answered

Please provide your views below:

If payment did happen it should be fixed so it is not a thing for the rich and poor

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 provude 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:

domestic; or

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

Not Answered

(a) opposite-sex couple;

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:

Short Form Questionnaire: Law Commissions' Surrogacy Consultation



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? 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?
Parent Through Surrogacy

What is your email address?
[redacted]

What is your telephone number?
[redacted]

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.
Please use comments if required. We are open about our surrogacy journey – as are our surrogate and kids!

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. Intended parents should automatically be legal parents at birth. This is in the best interests of everyone, especially the child. It also helps in situations where the baby needs consent for hospital treatment.**
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 – the surrogate should not have the right to object after birth. Intended parents should become legal parents at the moment of birth.**
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	**I do not think that at any point the surrogate should automatically become the legal parent of the baby, this is not what surrogates want. In the event of a dispute the IPs should remain legal parents until the case goes to court.**
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	**I don't think the spouse or civil partner should have legal parenthood under any circumstances. It is not something they want!**
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	**I think intended parents should have parental responsibility at the birth of the child. They should also have automatic parental responsibility in the event of a dispute, until a court makes a decison in the best interests of the child.**
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	**No. Intended parents want to be recognised as legal parents at birth. The surrogates I know (including our surrogate) do not want to have legal responsibility of a child from birth that they have carried for others (and therefore do not see the baby as their own).**
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	**As above. I do not think the surrogate should have automatic legal responsibility for a child she has carried for others.**
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. The pathway should be the same regardless of genetics.**
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	**The financial terms of a surrogacy agreement should be enforceable by the surrogate. It should not be dependent on her lifestyle.**
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, I agree an advertising ban should be lifted. Couples can currently advertise for egg/sperm donors.**
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 think surrogacy should be broadly medically necessary. If a doctor thinks surrogacy is necessary then that should satisfy the requirement.** **I include in "medically necessary" situations such as an extreme fear of pregnancy or those who would have to stop life saving/changing medicine if they were to get pregnant. I think same-sex couples and transgender people should be able to access surrogacy.**
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, I don't think this should be a requirement. I know several surrogates who are childless by choice. They fully understood the implications/risks before embarking on surrogacy and all their journeys have gone well. Most have had more than one surrogacy journey. I respect surrogates' autonomy to choose.**
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	**I think there should be some regulation of surrogacy organisations.**
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**
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	**Click or tap here to enter text.**
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	**I agree that double donation should be allowed where it is a medical necessity**
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**
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	**Yes**
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 agree those born through surrogacy should be able to access the register. In practice, most parents are honest with their children and children born through surrogacy will be aware of the facts surrounding their birth from an early age.**
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 – genetic siblings should be able to identify each other. I'm not sure about whether there should be a requirement if they are not genetically related.**
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	**If they are genetically related they should be able to identify each other.** **I'm not sure if it should be mandatory if they are not genetically related. However, my children do know the other child our surrogate carried – we are all friends and holiday together every year!**
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. Costs actually incurred by the surrogate. Most surrogates keep good records of expenses but I'm concerned about having to have formal receipts for everything.**

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	**Anything related to carrying a surrogate pregnancy should be included eg. vitamins, maternity wear, childcare, loss of earnings, taxis, healthy and quick meals for the family, family bonding holiday after birth etc.** **I do not support a move to a commercial model so do not support inconvenience payments or set amounts for reaching a certain stage in pregnancy etc. Or a payment for carrying a baby.** **Surrogates I know do not support commercialisation which will benefit lawyers etc rather than themselves. Moreover, they do not want the stigma associated with being a "womb for rent". They carry a baby for altruistic reasons – no amount of money can compensate them for the sacrifices they make. Commercialisation may attract women to become surrogates for the wrong reasons. It will also price people out of becoming parents (as happens in the US). Women such as myself who may already be at a disadvantage financially due to illness (cancer etc) may not be able to access this form of family building.**
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	**See first two paragraphs Q 29.**
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	**See first two paragraphs Q29**
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, absolutely!**
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	**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	**No compensation for the pain and inconvenience per se. However, I would class counselling, medical treatments etc arising from these things to be important. Plus things already including in expenses eg. loss of earnings and childcare costs for a transfer day to be covered.** **I do not want to see a fixed fee as all surrogates have unique circumstances. It should be left to the 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	**Life insurance should be paid by the intended parents BEFORE starting treatment to cover this.**
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	**I think intended parents should be free to choose gifts they see fit. It is not expected but very much appreciated.**
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	**I do not want to see a fixed fee or any sum paid to surrogates above expenses (see Q29). I am against a move to commercialisation of surrogacy. This is not what surrogates or intended want. It would fundamentally change the nature of the surrogacy relationship. Surrogacy is not a business arrangement.**
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	**Should be the same whatever is decided.**
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	**Click or tap here to enter text.**
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	**Click or tap here to enter text.**
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	**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**.

Response ID ANON-2V7F-Y83W-Z

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 11:39:12

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:

National Panel for Registration

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?

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 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:

This challenges the definition of a mother (ie having given birth to a child) this could cause some difficulty for the registration officer having to question the parents and then to determine whether they can legal register the birth - presumably there would be a requirement for a change in legislation? What evidence would the intended parents have?

15 Consultation Question 8:

Other

Please provide your views below:

Would these records be stored nationally? Where? Who would have access to them? How would a child born through surrogacy know this ? How would they obtain information?

Another period

Please provide your views below:

Access to these records for the sake of people tracing back family should be considered - particularly when looking a health implications

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:

Yes

Please provide your views below:

20 Consultation Question 13:

Other

Please provide your views below:

This proposal will have an impact on the registration process - additional training and length of appointments should be taken into consideration

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:

As above this brings into question the definition of mother

No

Please provide your views below:

As 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:

as 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:

Parental orders ensure that the birth Mother is documented with the intended parents then able to register at a later date - this satisfies current legislation

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:

Again consideration should be given to current practice, training, appointment time and the questioning being undertaken by the registration officer

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:

Other

Please provide your views below:

concerns as previous answers

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 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?

Not Answered

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:

There is only one type of birth certificate - a short certificate is no longer 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:

The current birth registration system allows a legal record of the natural parents to be recorded and with parental orders there is an opportunity for additional information.
The definition of a mother (the person who gave birth) being changed has implications

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:

who would be responsible for this and where would it be located?

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:

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 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 provude 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:

Concerns about changing the definition of a mother.
What documentation would be required at the time of registration - how could it be ensured that this was not fraudulent.
Impact on the face to face appointment with the registration officer
Would it be recorded that the child was born through surrogacy in the register and subsequently on the certificate? If not, how would they be aware?
Would there be a national register? where would this be kept?

Short Form Questionnaire: Law Commissions' Surrogacy Consultation



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? **Click or tap here to enter text.**

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?
Parent through surrogacy

What is your email address?
[redacted]

What is your telephone number?
[redacted]

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.
N/A

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	**Parents should be legal parents at birth. Surrogates do not want to be legally responsible for a baby that is not theirs.**
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	**I think the intended parents should have legal parenthood under any circumstances because they will be looking after the child. If the surrogate disagrees parenthood should be decided by the court in the best interests of the child.**
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	**I disagree. Even if a surrogate does not want the intended parents to have parenthood they may not want to be legally responsible for the child.**
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	**Click or tap here to enter text.**
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	**Medical necessity or for gay/transgender couples/people**
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. It is up to the surrogate to decide on the level of risk she is willing to take. I know several childless surrogates who enjoy being pregnant and creating families but do not want to be parents themselves.**
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	**Click or tap here to enter text.**
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	**Click or tap here to enter text.**
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	**Click or tap here to enter text.**
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	Click or tap here to enter text.
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	Click or tap here to enter text.
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	Click or tap here to enter text.
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	Click or tap here to enter text.
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	**Click or tap here to enter text.**
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	**Click or tap here to enter text.**
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	**Click or tap here to enter text.**
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. I do not want to see a move towards commercial surrogacy. And our surrogate does not want this either – she did it to help my partner and I become parents after my parners had had cancer treatment.**
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	**Click or tap here to enter text.**
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	**Click or tap here to enter text.**
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	**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**.

Response ID ANON-2V7F-Y8U6-1

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 12:03:05

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:

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?

Social worker

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 provides opportunities for exploitation of women and trafficking of children

Please provide your views below:

No

9 Consultation Question 2:

Please provide your views below:

No

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. UN special rapporteur recommends that these decisions are made after the birth.

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:

Birth mother should be legal parent at point of birth. She can't know how she will feel until she has the baby. Stop renting women's wombs out.

15 Consultation Question 8:

Other

Please provide your views below:

Disagree with 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?

Other

Please provide your views below:

Disagree with regulated surrogacy organisations. Normalises surrogacy which I believe is harmful

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:

Disagree with the new pathway

18 Consultation Question 11:

No

Please provide your views below:

Too much stress following birth. Birth mother should automatically be legal parent at point of birth.

19 Consultation Question 12:

Other

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:

22 Consultation Question 15:

No

Please provide your views below:

Risk of spouses coercing women to be a surrogate, especially if spouse has no parental responsibility

Yes

Please share your views below:

23 Consultation Question 16:

No

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:

Profoundly disagree with the new pathway.

26 Consultation Question 19:

No

Please provide your views below:

No

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:

Oppose 3 model of parenthood

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:

No

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?

Other

Please provide your views below:

36 Consultation Question 29:

Please provide your views below:

Disagree with new pathway

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

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:

[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.

s://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.

onsultees 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

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 f 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.

s://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

Paragraph 18.22

Response ID ANON-2V7F-Y8UJ-N

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 12:24:55

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:

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:

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:

Provided a proper framework is in place then it makes sense for the intended parents to be legal parents from birth. This will provide comfort to all parties involved.

15 Consultation Question 8:

Yes

Please provide your views below:

Proper record keeping is conducive to safe and regulated practice

100 years; or

Please provide your views below:

This is in excess of a lifetime, the likely useful period for such records

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 rules should reflect that of surrogacy via regulated clinics in the UK

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:

Unsure

18 Consultation Question 11:

Yes

Please provide your views below:

The right to object is important from the surrogate's perspective.

19 Consultation Question 12:

No

Please provide your views below:

The objection should be reviewed on the merits before any change to the legalparenthood is made.

20 Consultation Question 13:

Yes

Please provide your views below:

21 Consultation Question 14:

Yes

Please provide your views below:

The child should be treated in the same manner as any other after birth

22 Consultation Question 15:

Yes

Please provide your views below:

In no circumstances should the surrogate's partner be considered a legal parent of the child born through surrogacy. They will have no biological or social connection to the child.

No

Please share your views below:

In no circumstances should the surrogate's partner be considered a legal parent of the child born through surrogacy. They will have no biological or social connection to the child.

23 Consultation Question 16:

Yes

Please provide your views below:

This is the humane approach. The law should avoid placing undue stress on intended parents in such a distressing scenario. In a regulated surrogacy arrangement all parties go into the arrangement agreeing that the intended parents will be the legal parents.

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:

This is the humane approach. The law should avoid placing undue stress on intended parents in such a distressing scenario. In a regulated surrogacy arrangement all parties go into the arrangement agreeing that the intended parents will be the legal parents.

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:

The law should rely on the intentions laid out in the surrogacy agreement in this scenario (that it was the intention of all parties involved that the intended parents would be the legal parents).

26 Consultation Question 19:

Yes

Please provide your views below:

The law should rely on the intentions laid out in the surrogacy agreement in this scenario (that it was the intention of all parties involved that the intended parents would be the legal parents).

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?

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:

The law should aim to be inclusive of all types of surrogacy arrangements and attempt to regulate and safeguard howsoever possible

Please provide your views below:

40 Consultation Question 33:

Yes

Please provide your views below:

This will foster a safe environment for the practice of surrogacy in the UK

Yes

Please provide your views below:

Flexibility should be accommodated to the extent practically possible

Yes

Please provide your views below:

Accountability is an important aspect of regulation. Similar concepts are applied across most other industries.

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:

Compassion, understanding of the law, interpersonal skills, data handling skills

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:

UK Surrogacy should remain an altruistic endeavour to avoid the risk of exploitation for monetary reasons.

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:

It makes sense for oversight to be governed by the HFEA which is familiar with these matters

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:

UK Surrogacy should remain an altruistic endeavour to avoid the risk of exploitation for monetary reasons. Often intended parents can be desperate and vulnerable and therefore safeguarding is critical.

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:

It is an important aspect for de-stigmatising surrogacy arrangements, as well as making people aware it is an option for them.

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:

The person has a right to know their history, biological or otherwise

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:

Surrogacy arrangements should be open and honest arrangements. I am a father through surrogacy and I am proud of my daughter's history. I see no harm in recording this.

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:

The person has a right to know their history, biological or otherwise

55 Consultation Question 47:

Yes

Please provide your views below:

Tracking may be a helpful tool, particularly for the child born through surrogacy who wishes to find out their history

Yes

Please provide your views below:

DNA history is important from a medical perspective; a child should not be denied or obstructed from this by the law

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 person has a right to know their history, biological or otherwise

57 Consultation Question 49:

Yes

Please provide your views below:

The person has a right to know their history, biological or otherwise

Please provide your views below:

The person has a right to know their history, biological or otherwise - certainly where the legal parents have consented and they have received due counselling then they should be able to access the information

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:

Care should be taken over direct biological relations for medical reasons - otherwise there should be no concerns. A surrogacy register will alleviate these related concerns and risks

59 Consultation Question 51:

Yes

Please provide your views below:

We should not set ourselves up to reject the right of children having access to information that pertains to them and their biological relations.

Please provide your views below:

I see no problem with this.

60 Consultation Question 52:

Please provide your views below:

Yes - We should not set ourselves up to reject the right of children having access to information that pertains to them and their biological relations.

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 - I see this is an unnecessary time constraint. Time elapsed can be considered in any application

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:

No

Please provide your views below:

A surrogate should be free to help whomever she chooses, subject to care taken around any child safeguarding issues in other countries

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:

Safeguarding point that should be non contentious

67 Consultation Question 59:

Yes

Please provide views below:

We should not discriminate against infertile couples who wish to start a family.

Please provide views below:

Yes - We should not discriminate against infertile couples who wish to start a family.

No

Please provide views below:

Yes - We should not discriminate against infertile couples who wish to start a family (medical necessity should be proved)

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:

The intended parents should have equal rights in the eyes of the law.

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:

This will support good record keeping

Yes

Please provide your views below:

A child born through surrogacy should have access to information regarding their history

72 Consultation Question 64:

Yes

Please provide your views below:

Please provide your views below:

Yes

Please provide your views below:

Generally accepted age of adult responsibility

73 Consultation Question 65:

Yes

Please provide your views below:

Generally accepted age of adult responsibility

Yes

Please provide your views below:

Generally accepted age of adult responsibility

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Yes

Please provide your views below:

Safeguarding issue for the baby

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:

Safeguarding issue

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 - we should not discriminate against women who are not mothers but wish to be a surrogate. This is a very legitimate position and I personally know women who choose to do this.

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 should be an individual's personal choice, not a matter for the law

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:

Surrogacy in the UK should remain altruistic in nature - this should be the case in industries vulnerable to human exploitation. A woman should not have her human rights curtailed as part of a monetary contract - payment for a service creates the risk of expectation on behalf of the payer (intended parents)

81 Consultation Question 73:

Please provide your views below:

The surrogate should never be 'out of pocket' as a result of the surrogacy arrangement

82 Consultation Question 74:

Please provide your views below:

Yes - expenses do not need to be essential; it is entirely appropriate for intended parents to treat their surrogate for example (dinner out, comfort items etc - reasonable gifts)

83 Consultation Question 75:

Please provide your views below:

Yes - the surrogate should not have to pay to become a surrogate

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 should never be 'out of pocket' as a result of the surrogacy arrangement

85 Consultation Question 77:

Please provide your views below:

86 Consultation Question 78:

Please provide your views below:

If intended parents are only paying expenses then this should not affect means tested social welfare benefits

87 Consultation Question 79:

Please provide your views below:

All related expenses should be covered but not 'compensation payments'

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:

Intended parents should be required to pay for life assurance upfront to cater for this horrific eventuality

89 Consultation Question 81:

Please provide your views below:

Modest and reasonable gifts should be allowed - this is a normal and appropriate response to a beneficiary of altruism

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 in the UK should remain altruistic in nature - this should be the case in industries vulnerable to human exploitation. A woman should not have her human rights curtailed as part of a monetary contract - payment for a service creates the risk of expectation on behalf of the payer (intended parents)

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:

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?

Yes

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 provude your views below:

My experience with my related employment rights as an intended parent was a wholly positive one.

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:

The department was very unsure what my rights should be as an intended parent undertaking shared parental leave. They were unsure which governmental department was even responsible for this.

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:
[redacted]

domestic; or

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

Yes

(b) male same-sex couple;

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:

Limited impact in our case as we had complete trust in each other as a surrogacy team and no doubts that the parental order would be granted in due course. We have had however a negative experience from an administrative experience with the court to which we applied for the parental order. We applied for the PO in [redacted] and as of [redacted] it is still not granted due to a series of errors and continued lack of response from the court. This experience could conceivably place a lot of undue emotional stress on participants of surrogacy.

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:

The proposals appear to generally improve regulation and therefore encourage safety of all participants, as well as transparency for any child born through surrogacy. On whole this should increase accessibility. Hopefully a more regulated and understood practice will help foster positive perceptions and reduce stigma, which remains an issue

Please provide your views below:

124 Consultation Question 116:

domestic; or

Please provide your views below:

About GBP 18k, of which about GBP 15k related to the surrogate's expenses.
About GBP 1k to Surrogacy UK.
About GBP 2k for other costs, including medical testing

Please provide your views below:

Savings

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:

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?

Them Before Us

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?

N/A

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.

s://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 of 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.

onsultees 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 derive 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

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.

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

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

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

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 f 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.

s://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

Paragraph 18.22

Response ID ANON-2V7F-Y8U5-Z

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 12:31:19

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:

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:

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:

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:

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:

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 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?

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 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?

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?

73 Consultation Question 65:

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?

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:

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:

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:

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:

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:

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:

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 provude 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:

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.aspx

Short Form Questionnaire: Law Commissions' Surrogacy Consultation



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?
Persona capacity

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

What is your email address?
[redacted]

What is your telephone number?
[redacted]

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	**No. While I completely agree with the presumption that the IPs should be the legal parents, I see no necessity for the right to object (see question 11).**
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 – if an agreement has been entered into between the surrogate and IPs prior to conception, with both parties entering into it of their own free will, I think that this agreement should be absolutely binding. IPs need to be confident that the baby they believe to be theirs cannot be taken away from them. Assuming that the relevant screening and assessments have been carried out prior to conception, I can see no reason why the surrogate would change her mind, other than on a whim, and it is unreasonable to expect the IPs to live with this sort of anxiety. I believe the purpose of revising the law is to provide absolute clarity, and this provision creates an unnecessary grey area.**
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	**No, see answer to Question 11**
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	**I don't believe that the spouse / partner of the surrogate should be listed on the birth certificate. The current law means that there is a premium on single surrogates, and that married women who wish to be surrogates are not chosen. Given that the spouse of the surrogate has no biological claim over the child, it seems totally illogical that they should be listed on the child's birth certificate.**
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, as I have already mentioned I don't believe that the surrogate should have the right to object, but I absolutely think that the IPs should immediately acquire parental responsibility.**
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	**No – I think that from birth parental responsibility should rest with the IPs. There are often crucial medical decisions that need to be taken immediately after the birth, and there should be no confusion regarding whose opinion holds the most sway – i.e. it should be a decision taken solely by the IPs**
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	**Yes – I believe that the surrogate should not share any form of parental responsibility post-birth.**
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	**No, in circumstances where the surrogate is the biological mother, it is a different legal and moral matter.**
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 it should be a joint decision for the IPs and surrogate as to whether they wish their surrogacy process to be independent, for example with a close family member, or whether they wish to continue under the government pathway. I imagine that the vast majority of cases would fall within the latter group, and by requiring couples to register the surrogacy process this would then make it subject to the law, and both IPs and surrogates would enjoy the protection provided to them. Should people choose not to register their surrogacy process, and to continue independently of the process, outside of the protection of the law, then this would presumably be a joint decision, and they would be acknowledging that the process would have no form of governance.**
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. We found counselling to be key in our surrogacy process.**
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	**Yes, although I think that this would potentially be hard to implement. In situations where there is an economic disparity between surrogates and IPs it could be difficult for the surrogate to obtain a legal opinion. Were she to rely on the IPs to fund it then it would be hard to argue that it was genuinely independent.**
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; no.** **I believe that a surrogacy contract which contains financial provisions should absolutely be enforceable by the surrogate. However, the contract will contain both financial and lifestyle provisions, and I see no legal basis whatsoever for allowing a surrogate to breach part of the contract (i.e. the lifestyle provisions) and still expect the financial part to be fully upheld. I believe that every aspect of the contract should be legally binding, and thus any breach of contract should lead to a forfeiture of rights.**
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 – the current advertising ban causes enormous problems in recruiting surrogates and this would be extremely helpful.**
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 think that in case 1 there should be a requirement for medical necessity. Most clinics have fairly clear criteria regarding what is classed as a medical necessity, i.e. either the inability to produce eggs / carry a child, or a situation whereby carrying a child would endanger the life of the mother. As such asking for confirmation of this from an HFEA-registered clinic seems to be fairly straightforward. However, for those who choose to opt out of the official process and proceed independently, i.e. 2, I believe that there should be no restrictions, and anybody should be entitled to undertake surrogacy.**
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 – from both a medical and psychological perspective I think it is crucial that the surrogate has given birth**
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. I think that the issue of surrogacy organisations having "affiliate" law firms also needs to be examined, as this seems to be a very easy-to-exploit loophole allowing surrogacy organisations to monetise the process.**
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	**In the first case – yes. Both IPs and surrogates would appreciate the endorsement given by an agency, and would like to know that the other party has been properly vetted and checked for any issues. However, I don't believe that it is right, or practical, to preclude people from using family members / friends / other personal contacts as a surrogate, and should people wish to do so, they should be able to proceed without an agency's involvement.**
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	**I believe that double donation should only be permitted in cases of medical necessity, and should be permitted under all pathways, but only with stringent medical checks**

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**
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	**Yes**
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	**No – I see no reason why a child would need to access this information prior to the age of consent, as if there is parental consent, parents would be able to share that information themselves.**
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	**No – I don't think that this should be permitted. The relationship between IPs and surrogates can vary, and if both parties prefer not to have a significant relationship after the birth this is something very personal. If a child has been born to IPs who take this view, then allowing their child to contact someone with whom they share no tie other than they were carried by the same surrogate, could be seen as invasive. If the child wishes to make contact with the surrogate at the age of 18, and she then facilitates this meeting, that is an entirely different thing.**
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 they are genetically related, no if they are not**
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 – only those who apply for a parental order should be registered**
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	**The financial situation surrounding surrogacy needs to be clarified. I believe that surrogates should be paid (see later questions), and in that context, "costs" should be genuine costs actually incurred, which can be verified by receipt i.e. option 3**
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 – the IPS should be able to pay the surrogate any essential expenses she incurs. Essential should include any medical expenses (including supplements and prescriptions), any transport expenses, any clothing expenses, and any expenses which have only arisen directly as a result of the surrogacy, eg babysitting necessary because the surrogate is attending a hospital appointment**
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	**No only essential costs should be covered (but I believe this should encompass a broad range, see Q73)**
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, any expenses that arise due to the potential surrogacy, such as travel costs or counselling, should be covered.**
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	**The surrogate should be compensated for any lost earnings due to childbirth or medical complications (unless she has maternity cover in which the IPs should not be liable). However, if the surrogate elects to stop working at an early point in the pregnancy, for no medical reason, then compensating her should be permitted, but a matter for negotiation between the IPs and the surrogate, rather than mandatory**
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 if it can be substantively proven and calculated – this shouldn't be a mechanism for inflating costs**
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	**N/A**
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	**The surrogate should be paid compensation for any invasive medical procedures, and any specified complications. I think that this should also include multiple births. This should be on the basis of a fixed fee schedule decided by the regulator**
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	**I think that all surrogates should have a mandatory entitlement to life assurance paid for by the IPs, but IPs should not be expected to contribute any further payments on the occasion of a surrogate's death**
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 – gifts are a crucial way of showing goodwill to the surrogate, but clearly the cost of these gifts needs to be capped to prevent them being used as a way of circumventing any cap on the overall compensation – a cap should be set by the regulator at a level they consider appropriate**

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	**Yes it should be possible to pay a surrogate. This should be a fixed fee negotiated between the surrogate and the IPs, but the level of this fee should be capped by the regulator. In addition to this "base" fee, the surrogate should also receive the aforementioned costs listed in 2 – 6 above**
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	**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	**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**
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	**I think that the IPs should be kept in the loop at all times throughout the pregnancy by midwives. The way in which the situation is handled after the birth also needs to change, but I imagine that this would automatically do so as a result of the changes to the law.**

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**.

Response ID ANON-2V7F-Y8M1-M

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 12:49:21

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?

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:

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.

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?

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:

No. 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.

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:

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:

18 Consultation Question 11:

No

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.

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:

No

Please provide your views below:

Not Answered

Please share your views below:

23 Consultation Question 16:

No

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:

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 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:

Short Form Questionnaire: Law Commissions' Surrogacy Consultation



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? Surrogacy UK

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

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

What is your email address?
[redacted]

What is your telephone number?
[redacted]

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	**No**
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	**Yes**
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**
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	**No**
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	**Only IP's should have parental responsibility.**
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	**All surrogacy arrangements should be within the scope of the new pathway – traditional, independent or otherwise. This should apply throughout the whole of the UK. I.e. any new laws/pathways must be the same throught Scotland, England, Wales and Northern Ireland.**
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	**I'm not sure. If agreements were to become legally binding then yes, I agree.**
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**
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	**A doctor's or fertility clinic's report should suffice.**
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, some surrogates do not wish to have their own children. I see no problem with this.**
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**
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	**To some extent. There are many current independent arrangements which run smoothly.**
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	**I agree, so long as there is medical necessity. I'm not sure why international surrogacy should be any different to surrogacy in the UK though.**
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**
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 see no reason not to. As IP's, we intend to be fully open with our child about their circumstances of birth.**
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	**I agree, for anyone over the age of 18.**
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**
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	**I don't see why not. Currently, in most cases, these children tend to know each other anyway. This is certainly the case within my organisation (Surrogacy UK).**
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, they should still be on the register.**
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	(3) payment should be based on actial costs incurred, with receipts available.
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	**All pregnancy expenses (such as clothing, travel to appointments, vitamins, etc) plus others indirectly related to pregnancy – loss of earnings, extra childcare, etc.**
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	**I think the currect situation is preferable. 'Additional costs' make it seem too much like commercial surrogacy.**
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	**As above – all costs incurred during the pregnancy, from travel to clinics to loss of earnings.**
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, a surrogate should not lose out on earnings.**
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	**I'm not sure. This may be difficult to calculate to a degree of accuracy.**

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	**If a surrogate is only reimbursed for expenses, this should have not affect their social welfare payments.**
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	**I think compensation should probably be capped. It should be paid if, for example, a caesarean section requires additional loss of earnings or inconvenience.**
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	**Caompensation should be covered through life insurance which is paid for by IPs.**
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, gifts should be allowed, but within reason – not a sports car, for example.**
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	**I don't think it should be possible to 'hire' a surrogate. I believe surrogates do not want this either. All payments should come under expenses.**
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	**I don't think so.**
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	**I'm not well versed in international surrogacy laws, but any child born abroad, with British IP's, should be able to secure a British passport within a defined time – e.g. 2**

	weeks. I believe many IP's currently need to wait weeks or months before bringing their child home. I think this is unacceptable.
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	**I don't know enough about this to comment.**
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	**Health services, including midwives, should receive training on surrogacy. They must recognise and include IP's in all decision making.**

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**.

Response ID ANON-2V7F-Y8BC-U

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 12:50:02

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:

Osbornes 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:

N/A

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

Please provide your views below:

Such cases should be allocated to a judge of the High Court but if they are not automatically allocated then Circuit Judges should be ticketed to hear such cases.

9 Consultation Question 2:

Please provide your views below:

Domestic surrogacy cases which continue to require a post-birth parental order should allocated to Circuit Judges and a ticketing system should apply. The domestic cases which do not fall into the new pathway are likely to be more complicated and would certainly benefit from judicial continuity which is rare in cases heard by lay justices.

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:

Other

Please provide your views below:

In principle I am in agreement with this but this needs to be subject to sufficient safeguarding.

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:

This should prevent the arrangement from entering the new pathway.

18 Consultation Question 11:

No

Please provide your views below:

Rather than there being a right to object, the surrogate should consent. A consent is a positive experience whereas lack of objection could be seen as not caring for a child born through surrogacy. A consent provides a clear document to all parties, whereas a lack of objection is less clear.

19 Consultation Question 12:

Yes

Please provide your views below:

20 Consultation Question 13:

No

Please provide your views below:

Capacity can be a complicated issue and the lay person cannot be expected to understand this. A solicitor for example is unable to sign a certificate of capacity to conduct proceedings. This difficulty would hopefully be removed if an affirmative consent were given and such consent was witnessed by a professional who has been involved within the process.

21 Consultation Question 14:

No

Please provide your views below:

The welfare of the child assessments undertaken by clinics can be cursory and is mainly reliant upon self reporting in relation to the intended parents. it is unclear why the surrogate's GP is contacted but not the intended parent(s)as these will be the people raising any child. I can see no reason why the intended parent (s)' GP cannot be asked if there are any welfare of the concerns nor why there cannot be a social services check much like the current cafcass safeguarding checks.

Whilst those working in clinics are highly skilled their expertise is often not in child welfare. There should be someone whose expertise lies in child welfare providing part of the welfare assessment and providing support and guidance to parties about child welfare issues.

Different clinics may take different views about child welfare. If there a refusal to treat the Code of Practice apparently allows information to be shared but a clinic will not be able to share information to all clinics. There are limited circumstances in which the opportunity to share information arises, e.g. in the event that gametes are to be transferred from one clinic to another. As many clinics are privately owned it is hard for a patient to challenge a decision to refuse to treat, for example a decision may not be judicially reviewed.

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 agree that it should not proceed in the new pathway and that the intended parents should be required to make an application for a parental order.

26 Consultation Question 19:

Yes

Please provide your views below:

Please provide your views below:

I would support 1 a) or 2.

27 Consultation Question 20:

Yes

Please provide your views below:

although the second intended parent should still be afforded the opportunity to make the application at any time prior to the making of a parental order, new information or circumstances should arise and it may be appropriate for the second intended parent to make the application.
An applicant should be warned that the consequences of not being truthful could lead to any parental order being revoked.

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:

There should be a social work assessment of the proposed arrangement before the new pathway should be entered into.
The oversight should be administrative but there should be a judicial process in the event of a dispute.

30 Consultation Question 23:

Please provide your views below:

The welfare checklist is sufficient.

31 Consultation Question 24:

Please provide your views below:

The checklist does not need amendment.

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 this would be sensible.

33 Consultation Question 26:

No

Please provide your views below:

Although there could be automatic acquisition upon the making of an application for a parental order.

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:

I would not propose a restriction, any disputes should be dealt with in the courts.

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:

Parenthood of a biological and birth mother should not be extinguished following a lack of objection. There should be an affirmative consent and this should be witnessed, preferably by a professional involved in the pathway to ensure that there has been no intimidation.

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:

No- it is hard to see how this would be feasible.

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:

there should be clear guidance as to what constitutes not for profit.

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:

any activities in relation to recruitment, introduction, support, written agreements and criminal records checks.

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:

Only regulated surrogacy organisations should be able to offer 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:

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:

Yes this information should be recorded and made available for disclosure.

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, there should be such provision.

59 Consultation Question 51:

Yes

Please provide your views below:

Please provide your views below:

Yes they should be able to.

60 Consultation Question 52:

Please provide your views below:

Yes they should be able to access the register.

Please provide your views below:

Yes they should be able to access the register.

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:

Intended parents should be encouraged to apply within 6 months. Intended parents should seek permission to apply for orders after 6 months.

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:

A qualifying period would help to reduce the likelihood 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?

Yes

Please provide views below:

67 Consultation Question 59:

Yes

Please provide views below:

but there should be further guidance on what constitutes medical necessity, such guidance to be informed by medical professionals. The decision to move to donor gametes is a very personal one, some people will continue using their gametes even though their chances are very low others will make the decision to move to donated gametes. The surrogate's welfare should also be taken into consideration by the doctor when determining medical necessity. The medical treatment involved to get to embryo transfer is invasive, requires frequent monitoring and the drugs can cause unpleasant side effects- is it fair on a surrogate to undergo repeated cycles where the chances of success are small? The doctor should also consider the risk of miscarriage.

Please provide views below:

The same rules should apply for both pathways.

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:

but perhaps the Court should seek specific consent from former partner with the genetic link.

70 Consultation Question 62:

Please provide your views below:

Yes. Social surrogacy should not be permitted.

Please provide your views below:

It should be defined as per the Law Commission proposals and assessed by a doctor.

71 Consultation Question 63:

Yes

Please provide your views below:

Please provide your views below:

Yes to both.

Yes

Please provide your views below:

72 Consultation Question 64:

Yes

Please provide your views below:

Yes.

Please provide your views below:

The maximum age limit should be in line with the maximum age limit of treatment for a woman at a fertility clinic.

Yes

Please provide your views below:

73 Consultation Question 65:

Yes

Please provide your views below:

Although I am of thew view that the age should be at least 21 years.

Yes

Please provide your views below:

I would say that they surrogates should be at least 21 years.

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:

Yes, there should also be a social services check of the intended parents, similar to the Cafcass safeguarding checks.

Please provide your views below:

Yes this is appropriate.

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:

There should be a requirement if traditional surrogacy is proposed.

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:

There should be a maximum number of pregnancies although I do not have the expertise to quantify that number.

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:

The intended parents should be able to pay the essential costs related to the pregnancy but I am not in a position to respond to 2.

82 Consultation Question 74:

Please provide your views below:

they should pay the additional costs relating to the pregnancy, I am not in a position to respond to 2.

83 Consultation Question 75:

Please provide your views below:

Yes to 1.

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 the intended parents should be able to pay their surrogate her actual lost earnings.

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:

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:

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:

The intended parents should ensure that the surrogate has life assurance.

89 Consultation Question 81:

Please provide your views below:

Yes, they should be able to buy gifts.

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:

a fixed fee set by the regulator.

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

Please provide any views below:

91 Consultation Question 83:

Please provide views below:

Such payment should be reduced.

in the first trimester of pregnancy only;

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?

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:

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:

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 provude 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:

Short Form Questionnaire: Law Commissions' Surrogacy Consultation



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? Surrogacy UK

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

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?
[redacted]

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. As a surrogate I do not want to be the legal parent or have parental responsibility of a child that is not mine. It leaves me in a vulnerable position where the parents of a child I have given birth to could walk away from the arrangement and leave me with the child. I know this is a highly unlikely situation but it is just as real a possibility as a surrogate wanting to keep a baby so it is essential reforms are made to protect all parties involved, including the child.**
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	**I do agree that a surrogate should have the right to object but on the following grounds:** **The right to object should only be on the grounds of safeguarding, i.e. the surrogate believes the child would be in danager should the Intended Parents (IPs) become the legal parents. This is to avoid a surrogate using the right to object as a means of revenge or holding the IPs to account over disagreements during the pregnancy (perceived or real) as seen in the case of AB discussed in the consultation paper. When entering a surrogacy arrangement, particularly if the steps proposed for the new pathway are followed, a surrogate will be fully aware of the implications of being a surrogate and has proactively chosen to carry a baby for the IP or IPs, and as such has already consented to them becoming the legal parents so should have no reason to object to them other than on the grounds of the welfare of the child.** **The right to object should be made in writing before birth and a surrogate should have to explain her reasons for the objection. There is no reason why the right to object should extend beyond the birth of the child.** **It could be argued that a surrogate may be influenced by hormonal changes in the period immediately following birth which would not be typical of her mindset when usually making important decisions. Her decision to become a surrogate would not have been made at such a time and the steps she will have to go through under the new pathway mean she will have made an informed choice to enter a surrogacy arrangement and that choice should not be overridden by a decision made at a more vunerable time.** **The current proposal of having the objection period as one week less than the period of birth registration is unpractical in terms of only giving a week's window for the registration to take place. It also creates a disparity across the UK as Scotland has a different registration period to England and Wales. It is also unclear that if this approach is adopted whether it is the home country of the surrogate or the IPs that will determine ther period of objection.**
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	**If a surrogate objects then legal parenthood should be shared between the surrogate and all IPs, regardless of whether they subsequently appear on the birth certificate.** **The current law means that if a surrogate has a spouse or civil partner any intended parents are unable to become a legal parent at birth. It is vital for children born through surrogacy to have the right to have their intended parents recognised from birth and therefore at least one of the intended parents must be able to have legal parenthood from birth.** **In the case of an objection where IPs have to apply for a parental order, this should be able to be granted without the consent of the surrogate if the court is satisfied there are no safeguarding concerns that would stop the child living with the intended parents.**
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	**A surrogate's spose or civil partner should not be a legal parent in any circumstances.**
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 with both these propsals.**

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	**I believe the objection period should end prior to birth and therefore all parental responsibility should be with the intended parents from the moment of birth if no objection has been made. As a surrogate I do not want to have parental responsibility for a child that is not mine and who I have knowingly and willing carried for somebody else. I have made an active choice to help the IPs become parents and would like the law to respect that choice and recognise I am not the child's parent.** **If an objection is made then the parental responsibility should lie with whoever the child is residing with, which should be the intended parents by default unless a court or social services has made a different determination prior to birth.**
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	**As stated above, parental responsibility and residency of the child should automatically go to intended parents at birth, even where an objection has been made by the surrogate unless the courts or social services have determined otherwise prior to birth. If it is decided the objection period should be post birth and that a surrogate retains parental responisiblity then the right to exercise parental responsibility should only extend to whoever the child is living with.**
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, the courts should be able to consent to a parental order or determine where a child should live based on the welfare of the child alone and not have to depend on the consent of the surrogate.**
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	**Yes independent arangements should come under the new pathway. If they follow the eligibility requirements for the pathway they will have gone through the same process as those arrangements made through an organisation.** **Paties of independent arrangements can submit their own evidence to the Authority that all requirements have been met prior to trying to conceive.**
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	**I agree implications counselling is important so agree it should be a requirement of the new pathway. I believe however, that members of a surrogacy organisation should be able to meet this requirement through sessions such as the current membership and agreements sessions run for all members by Surrogacy UK, for example.**

	I also think this requirement should be removed if the arrangement is for a sibling agreement where the surrogate and intended parents have previously had a successful surrogacy arrangement together.
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	**This is not a current requirement for gamete donors or recipients so I do not believe it should be for surrogacy arrangements, particulary those made through an organisation. I think perhaps independent arrangements should have this requirement.** **I also believe exceptions should be made for sibling arrangements between the same surrogate and intended parents.** **I have particular concerns that this, along with the requirement for counselling and increased agency fees that will undoubtable happen should agencies become regulated, will increase the cost of surrogacy beyond the means of some intended parents who may otherwise be able to afford it. One of the aims of the reforms is to reduce the number of international surrogacy arangements but people may look at this option if surrogacy in the UK becomes unaffordable.**
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	**I strongly disagree with any part of a surrogacy arrangement being enforceable, including the financial terms. However, at present there are no checks done by Surrogacy UK that intended parents are in a financial postion to cover the expenses agreed with their surrogate, which leaves surrogates in a vunerable position.** **Also, if financial terms became enforceable then there would need to be lots of scope for flexibility to any changes of circumstances that may effect the level of expenses needed, for e.g. premature birth, c-section, a change in a surrogate's personal circumstances such as promotion meaning a higher loss of earnings than originally calculated would be needed, etc. etc. There are many circumstances that can effect the amount of expenses needed.** **So I would prefer for there to be a requirement for intended parents to provide evidence they can cover the financial costs of a surrogacy arrangement prior to trying to conceive. This could be surrogacy organisations requiring proof at time of membership or agreement, and in independent arrangements for the IPs to provide evidence to the surrogate or perhaps to the person they have gone to for the independent legal advice.**

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. If the ban is lifted it should be restricted to surrogacy organisations being able to advertise that they exist, though I worry about cost implications to intended parent membership fees to cover this. I do not believe that either surrogates or IPs should be able to advertise either to be or for a surrogate.**
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	**Yes there should be a medical need in all circumstances, surrogacy should not be used for convenience.** **The medical need must include phychological as well as physical medical conditions and should be proved through medical evidence such as a doctor's report.**
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	**Absolutley not, I strongly disagree with this proposal.** **In the consultation paper you site one of the reasons for this as a childless surrogate may be "less able to give informed consent about the decision to…give up the baby she gives brith to". This is an incredibly insulting statement to make. Surrogates in the UK (because of the altruistic aspect of UK surrogacy) actively choose to help another person become a parent. To imply a woman is not capable of making such a decision and it is some how unnatural for not wanting to keep a child she has given birth to, is very wrong. Surrogate's know their own minds and as consenting adults should not be patronised in this way. Surrogate's in the UK are not vunerable women, as some seem to suggest, we are intelligent and find it empowering to make the choice to do this.** **Any concerns about a childless surrogate losing her own fertility or perhaps having undiagnosed fertility problems of her own can be addressed at the implications counselling stage of the process and an informed choice can be made by the surrogate and intended parents as to whether to continue.**
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, there should be no aspect of profit making in UK surrogacy so that it remains altruistic and so that surrogates and intended parents are not taken advantage of for monetary gain.**
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. Anyone offering these services should be meeting agreed standards.**
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 I agree to all of the above.**
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 to all parts.**
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	**Yes they should, as proposed in the previous question.**
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 agree to the proposal about access at ages 16 and 18.** **Yes I believe a child under those ages should have access if criteria 1 and 2 are met above. They should also have access if there is a medical need to their genetic information.**
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 those genetically related should be able to identify each other. And yes a child born via a surrogate should have the option to consent to being identified by other children born via the same surrogate if not genetically related.**
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 in both circumstances, surrogate's own children and those born via the same surrogate should be able to consent to identify each other if they wish, regardless of genetics.**
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, a child should have full access to their origins, including intention not just genetics.**
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	**The current expenses system does work fine as it is, I am not sure why the law commission feels it needs to be changed. I believe education is needed in other government departments (DWP and HMRC for eg) that any monies received in a surrogacy arrangement are not income. So to answer this question the costs met by the intended parents should be the costs actually incurred by the surrogate, supported by a receipt where possible. Not every purchase can be evidenced by a receipt, for e.g. if a surrogate makes a provision for extra spend in her weekly shop to cover more healthy products, this could only be proved by a comparison in receipts before and during pregnancy which would not be practical.** **If a production of a receipt is required this suggests the surrogate should meet the costs of the pregnancy herself then be reimbursed. Some surrogates may not have the financial means for this. At Surrogacy UK a surrogate estimates her pregnancy expenses before a pregnancy is achieved and then once the pregnancy is achieved the intended parents cover these in 10 equal instalments four weekly. That way the surrogate has money in hand from the intended parents to make purchases needed. This system should be able to continue.**
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	**Of course intended parents should cover the costs of the pregnancy, they are costs they would incur should they have carried the pregnancy themselves.** **A surrogate should be able to determine what she requires expenses for and this will vary between surrogates to reflect their personal circumstances. Surrogates are not motivated by financial gain in the UK and already only include essentials costs in their expenses. They should not have to define or justify to anyone why an expense is essential. The Surrogacy UK recommended model of estimating expenses before a pregnancy is achieved and then splitting this into 10 equal instalments suring the pregnancy has been proven as an effective way of managing expenses and perhaps should be looked at as being adopted into these proposals rather than trying to define if one type of expense is "essential" or not.**
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	**A surrogate should be able to determine what she requires expenses for and this will vary between surrogates to reflect their personal circumstances. Surrogates are not motivated by financial gain in the UK and already only include essentials costs in their expenses. They should not have to define or justify to anyone why an expense is essential.**
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	**A surrogate should be able to determine what she requires expenses for and this will vary between surrogates to reflect their personal circumstances. Surrogates are not motivated by financial gain in the UK and already only include essentials costs in their expenses. They should not have to define or justify to anyone why an expense is essential.**
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. A surrogate should be able to determine what she requires expenses for and this will vary between surrogates to reflect their personal circumstances. Surrogates are not motivated by financial gain in the UK and already only include essentials costs in**

	their expenses. They should not have to define or justify to anyone why an expense is essential.
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. A surrogate should be able to determine what she requires expenses for and this will vary between surrogates to reflect their personal circumstances. Surrogates are not motivated by financial gain in the UK and already only include essentials costs in their expenses. They should not have to define or justify to anyone why an expense is essential.**
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	**I have not had any personal experience of this.**
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	**Part 1 of this question - A surrogate should be able to determine what she requires expenses for and this will vary between surrogates to reflect their personal circumstances. Surrogates are not motivated by financial gain in the UK and already only include essentials costs in their expenses. They should not have to define or justify to anyone why an expense is essential. If this includes treatments for any complications during or because of the pregnancy then that is understandable.** **By compensation though do you mean an additional sum not just the cost of the expenses themselves? If so then no, I firmly believe all monies given to a surrogate from the intended parents should be for costs incurred and therefore be expenses only. As a surrogate I am fully aware of all the potential complications and situations that can occur during conception, pregnancy and birth and accept these risks as part of the process.**
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	**No I do not agree with any compensation payments in surrogacy. I do believe it should be a requirement that IPs pay for life insurance for the surrogate from the time of trying to conceive through to a set period of time post birth, perhaps 6 or 12 months. Surrogacy UK already have this requirement for their members and I believe it is best practice and should be taken forward by the Law Commission as part of the requirement for the new legal pathway.**
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 IPs should be able to buy gifts and they should be reasonable in nature to ensure they are not used as a means of payment. I recognise, however, determining what is reasonable could be problematic.**
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, as a surrogate I am strongly opposed to the payment to a woman for being a surrogate. I believe this would lead to the explotation of surrogates and IPs. I also believe it would be detrimental to the child born through surrogacy to grow up believing they were bought or sold. It would also out price many IPs from accessing surrogacy in the UK and may cause an increase in international arrangements.** **The only monies that should be payable to the surrogate should be expenses only.**
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	**No payments should be made to surrogates, regardless of the route to legal parenthood for the IPs. Expenses only should be covered in both routes.**
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	**No, expenses only should be covered.**
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	**Click or tap here to enter text.**
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	**There are already government guidelines in place but it is clear from the experiences of surrogates and IPs I know that health services are not always aware of them or follow them. There needs to be a suitable education programme to ensure that health services know that the guidance exists and how to find it.**

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**.

Response ID ANON-2V7F-Y8UF-H

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 13:28:11

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:

NHS

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?

Not Answered

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:

This is imperative to help prevent abuse and exploitation

Please provide your views below:

No. Circuit judges are already under immense pressure.

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:

No

Please provide your views below:

Intended parents shouldn't be documented as the legal parents at birth. Surrogate mothers should have every chance to change their mind and should not be treated as a body part only.

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?

No

Please provide your views below:

As a clinical geneticist, I disagree. This limits a child's ability to understand their genetic history and also increases the chance of later inadvertent incest/consanguinity.

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:

This appears to be written with no thought to the difficulty of birth and the postpartum period, as well as the natural bond that exists between a birth mother and child. This also doesn't appear to have the child's best interests at heart. A surrogate mother 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.
Also consideration should be given to the importance of good attachment- a handover as though for the delivery of goods, dismisses the needs of the child and the mother at a very emotional time. A week is not enough time in this fragile postpartum period. I feel it should be a minimum of a month. One has six weeks to register a birth, let alone be certain about handing over the child one has carried. The surrogate mother is not simply a commodity in all of this.

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:

I feel that making surrogacy a business benefits no one but lawyers and agencies and risks serious exploitation. Why are we trying to make this dangerous practice even more open to abuse, when other countries have banned it?

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:

This path is very open to exploitation. Frankly, no rich woman ever acts as a surrogate.

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)

[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.

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

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 f 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

Paragraph 18.22

Response ID ANON-2V7F-Y8UT-Y

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 13:56:10

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:

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.

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:

No

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:

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.

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:

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.

18 Consultation Question 11:

No

Please provide your views below:

There should be a defined period after the birth of the child/ren to allow the surrogate mother to object to the acquisition of legal parenthood by the intended parents - that period should be longer than ONE WEEK after the birth of the child/ren. A more practical and reasonable period would be 3 months.

One week will not be enough to recover from giving birth (especially if there are medical complications) and organise or begin the logistics of any legal

proceedings.

19 Consultation Question 12:

No

Please provide your views below:

20 Consultation Question 13:

Yes

Please provide your views below:

21 Consultation Question 14:

Not Answered

Please provide your views below:

22 Consultation Question 15:

No

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?

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:

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:

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:

No

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:

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:

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:

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:

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 that 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:

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:

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:

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:

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:

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

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:

[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

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 f 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

Paragraph 18.22

Response ID ANON-2V7F-Y8U3-X

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 13:56:23

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:

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:

No

Please provide your views below:

Making any parental responsibility order before birth undermines women's bodily autonomy and ignores the interests of the child. Decisions about legal parenthood should not be taken before a child is born and transferring parental responsibility should not be automatic.

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 strongly disagree. I do not believe birth mothers are in a position to provide free and informed consent to relinquishing any legal relationship with the child until it is born. I would be worried about the power dynamic between intended parents and surrogate mother and the potential for birth mothers to feel unable to refuse for financial reasons. I also know there is a meaningful difference between giving up a pregnancy and giving up a child, and that the birth mother must be given the opportunity to act in full, concrete knowledge of her options rather than being forced to make this decision before the child is born.

I am also worried about the implications for the surrogate mother's bodily autonomy. If women's pregnancies in these circumstances are not legally their own children, how does that square with the right to abortion, to choice in antenatal care?

15 Consultation Question 8:

Other

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:

I strongly disagree with the idea that the intended parents should automatically acquire legal parenthood at birth. I believe that the birth mother should be the legal parent at birth and all other decisions about legal parenthood and parental responsibility should be taken by a court after the birth, based primarily on the child's best interests.

Giving birth mothers 5 weeks or less to object in writing seems inhumane, given the need for physical and emotional recovery after birth and the huge significance of the decision.

19 Consultation Question 12:

Other

Please provide your views below:

I believe the birth mother should be the legal parent by default, without any need to object. This would equally deliver points (1) to (3) above, with which I agree, on the assumption that the resolution of (3) involves a court decision.

20 Consultation Question 13:

No

Please provide your views below:

I disagree with the whole “new pathway” approach. The birth mother should be the legal parent by default and any further decisions about parental responsibility / legal parenthood should be made by a court after the birth, based on the child’s best interests.

I do not believe that placing the onus on intended parents to assess the surrogate mother’s capacity to consent is at all sensible. There’s a clear conflict of interest here. I would have no confidence in this process at all as a safeguard against obtaining the appearance of consent from a mother who lacked capacity.

21 Consultation Question 14:

No

Please provide your views below:

No, I believe that a welfare check after the birth is necessary, to support a court’s ability to make decisions about the child’s legal parenthood in its best interests. As above, I believe that the birth mother should be the child’s legal parent by default, until a decision is made by a court after birth, based on the child’s best interests. I do not believe that those interests can be established purely based on a pre-conception welfare check, both because much can change over that time and because after birth information about the child itself can be taken into account.

22 Consultation Question 15:

No

Please provide your views below:

I think the law about legal parenthood is a mess in general. Rather than making decisions about it in this context as a special case, we should review and consult fully on the law as it stands and decide whether or not spouses or civil partners with no biological relationship to the child should or should not acquire legal parenthood by virtue of their legal relationship with its biological parent.

The position of the surrogate’s spouse/civil partner should be the same as their position in relation to any other child born to their wife/civil partner to whom they’re not biologically related.

Yes

Please share your views below:

I think the law about legal parenthood is a mess in general. Rather than making decisions about it in this context as a special case, we should review and consult fully on the law as it stands and decide whether or not spouses or civil partners with no biological relationship to the child should or should not acquire legal parenthood by virtue of their legal relationship with its biological parent.

The position of the surrogate’s spouse/civil partner should be the same as their position in relation to any other child born to their wife/civil partner to whom they’re not biologically related.

23 Consultation Question 16:

No

Please provide your views below:

As above, I believe the gestational mother should be the legal parent of the child up to and after birth. This should not change for stillbirths.

Yes

Please provide your views below:

I agree with this provided the surrogate mother is fully informed of the implications of this scenario before conception.

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 with this provided the surrogate mother is fully informed of the implications of this scenario before conception.

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 the proposed "new pathway" so I would suggest that in this scenario, as in any other scenario, the new pathway should not be used.

26 Consultation Question 19:

No

Please provide your views below:

I believe the birth mother should remain the default legal parent of the child up to and at birth. Decisions about legal parenthood should be made after the birth, by a court, based on the child's interests. If the intended parents have died before the birth, I find it difficult to imagine a scenario in which it's in the child's best interests to register them as its legal parents.

Please provide your views below:

(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 believe the law on legal parenthood should be reviewed and properly consulted on in general. We should not institute (1) for surrogacy only. I think there may well be good reasons for a three-parent model in surrogacy (and not necessarily only temporarily) and in other circumstances as well, but we should be looking at the full implications and updating the law in a consistent, informed way rather than introducing an exception for surrogacy without examining the wider implications.

29 Consultation Question 22:

Please provide your views below:

I strongly disagree with the "new pathway" proposal. The birth mother should remain the legal parent throughout her pregnancy and at birth, with any other decisions about legal parenthood made by a court, after birth, based on the child's interests.

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.

33 Consultation Question 26:

No

Please provide your views below:

I disagree. Why should the intended parents acquire parental responsibility in circumstances where it would not be acquired by other individuals e.g. grandparents who were living with and/or caring for the child? This proposal seems to be prioritising the intended parents' wishes / intentions over the

best interests of the child - decisions about legal parenthood should always be based on the latter.

34 Consultation Question 27:

No

Please provide your views below:

The surrogate mother should have parental responsibility for the child at birth by default, and any further decisions about parental responsibility should be made after birth, based on the child's best interests. If the birth mother does not wish the intended parents to have parental responsibility, the dispute should be settled by a court based on the child's best interests.

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 disagree with the intended parents' getting automatic legal parenthood and parental responsibility.

36 Consultation Question 29:

Please provide your views below:

I do not believe that these circumstances should be treated any differently from any other circumstances where more than one person has parental responsibility and/or where the parties with parental responsibility do not all live with / care for the 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?

No

Please provide your views below:

I strongly disagree with the "new pathway". I do not believe any surrogacy arrangements should fall within its scope.

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 deeply disagree with the proposals for the "new pathway". It deprioritises the interests of the child, undermines women's bodily autonomy, undermines safeguarding against coercive surrogacy and trafficking, and contradicts binding obligations under the UNCRC and its first optional protocol.

Please provide your views below:

I deeply disagree with the proposals for the "new pathway". It deprioritises the interests of the child, undermines women's bodily autonomy, undermines safeguarding against coercive surrogacy and trafficking, and contradicts binding obligations under the UNCRC and its first optional protocol.

40 Consultation Question 33:

Other

Please provide your views below:

I oppose commercial surrogacy. I would be concerned that regulated surrogacy organisations would normalise commercial surrogacy and prioritise intended parents' desires over the interests of children and women.

Other

Please provide your views below:

See above.

Other

Please provide your views below:

See above.

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?

Other

Please provide your views below:

I oppose commercial 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 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?

Other

Please provide your views below:

I oppose commercial surrogacy. I would be concerned that regulated surrogacy organisations would normalise commercial surrogacy and prioritise intended parents' desires over the interests of children and women.

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?

No

Please provide your views below:

I oppose commercial surrogacy. I would be concerned that regulated surrogacy organisations would normalise commercial surrogacy and prioritise intended parents' desires over the interests of children and women. I disagree with the "new pathway". I think any body charged with overseeing surrogacy should prioritise the interests of the children born through surrogacy as well as the women at risk of exploitation in surrogacy arrangements. I am not convinced that this is close enough to HFEA's core remit for it to be the right choice.

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 oppose commercial surrogacy. Surrogacy is such a huge and potentially life-changing decision for women, with at least equal implications for the children born of surrogacy, that we should be really careful not to introduce financial incentives - either directly to surrogate mothers, or to third parties for influencing women to become surrogates. This proposal would incentivise third parties to convince women to become surrogates, undermining the free and unforced consent on which surrogacy rests, and is thus unethical.

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 oppose commercial surrogacy. Surrogacy is such a huge and potentially life-changing decision for women, with at least equal implications for the children born of surrogacy, that we should be really careful not to introduce financial incentives - either directly to surrogate mothers, or to third parties for influencing women to become surrogates. This proposal would allow organisations to increase the market for surrogacy, as well as to convince women to become surrogates, undermining the free and unforced consent on which ethical surrogacy rests. I would also be concerned that advertising surrogacy services will reduce the acceptability of adoption, reducing the life chances of children in need of adoptive parents at the same time as creating a market for newborn 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 disagree with the “new pathway” and do not believe the intended parents should appear on the birth certificate. However, if they do, yes, the full certificate should make the surrogacy arrangement clear.

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:

Yes. I would like to see a full consultation on reform. It’s really complicated and there are many different interests at play. We need to review what purpose birth certificates serve and for whom, and update the system to serve those needs consistently, without sexism, and in line with safeguarding.

My current thoughts are:
- review the situation with respect to non-biological parents, where my understanding is that spouses/civil partners unrelated to their wife’s child are treated differently based on their sex, which is sexist
- review the situation with respect to the number of parents - I believe there may be good reasons for three-parent scenarios in surrogacy arrangements and others
- disentangle birth registration from people’s wish to update it later (e.g. if parents get married or if child changes gender) - the historical record should be amendable only in cases where there was a mistake, but equally people should not have to share personal details e.g. biological sex when asked for ID in situations where they are irrelevant

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:

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:

Yes, this is a good idea.

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. 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:

Other

Please provide your views below:

These circumstances should be treated the same as if the legal parent is not a surrogate. I am concerned that the proposals support commercial surrogacy, which increases the risk of women being trafficked or coerced to act as surrogates. I oppose any measures that would make it more convenient for intended parents for surrogate mothers to be untraceable after birth.

No

Please provide your views below:

These circumstances should be treated the same as if the legal parent is not a surrogate. I am concerned that the proposals support commercial surrogacy, which increases the risk of women being trafficked or coerced to act as surrogates. I oppose any measures that would make it more convenient for intended parents for surrogate mothers to be untraceable after birth.

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 think they should be domiciled in the UK, not just habitually resident, to reduce the risks of intended parents choosing to live temporarily in the UK to take advantage of these proposed surrogacy arrangements, which would increase the market for commercial surrogacy (which I oppose) and make it more difficult for children born of surrogacy to trace their birth mothers later on.

Please provide your views below:

See above.

65 Consultation Question 57:

Please provide your views below:

They 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 disagree with the "new pathway".

67 Consultation Question 59:

No

Please provide views below:

I disagree with the "new pathway".

This proposal, combined with the rest of the "new pathway" proposals, sets up a scenario where the only legal parents of a child at birth have no relationship with that child at all except the fact that they have paid for its production. I'm very concerned about the ethical implications of this: how are we safeguarding the children born in such circumstances? While genetic relationship is certainly not a safeguard in itself, I find it hard to believe that setting up a situation where any two adults can effectively buy babies they're entirely unrelated to is not a huge safeguarding risk for those children.

I would not necessarily be against this double donation proposal in isolation, however; it's the combination of this with automatic legal parenthood and commercial elements that worries me.

I can't see how surrogacy can ever be a "medical necessity".

Please provide views below:

No.

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:

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?

Other

Please provide views below:

This decision should be made by a court, after the child is born, and based on the child's best interests.

70 Consultation Question 62:

Please provide your views below:

I can't see how surrogacy is ever a medical necessity.

Please provide your views below:

Don't. This would ludicrously distort the meaning of "medical necessity".

71 Consultation Question 63:

Other

Please provide your views below:

I oppose the "new pathway".

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:

Other

Please provide your views below:

I oppose the "new pathway". However if it takes effect, I believe there should be a minimum age for intended parents, and 18 is probably too young.

73 Consultation Question 65:

Other

Please provide your views below:

I oppose commercial surrogacy. I disagree with any pre-birth parental orders. I believe the surrogate mother should be the legal parent at birth by default, with any further decisions about legal parenthood made by a court, after birth, based on the child's best interests. I believe advertising surrogacy should be illegal. Under those circumstances I would cautiously support a lower age limit of 18 for surrogates.

Other

Please provide your views below:

I oppose commercial surrogacy. I disagree with any pre-birth parental orders. I believe the surrogate mother should be the legal parent at birth by default, with any further decisions about legal parenthood made by a court, after birth, based on the child's best interests. I believe advertising surrogacy should be illegal. Under those circumstances I would cautiously support a lower age limit of 18 for surrogates.

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Other

Please provide your views below:

I disagree with the "new pathway".

Please provide your views below:

75 Consultation Question 67:

Other

Please provide your views below:

I oppose the "new pathway".

However, should it take effect, I would agree with (1), and would add that all parties involved should be required to attend counselling as individuals, not as groups or couples. The counselling should lay out potential emotional and physical implications for each party clearly and impartially, as well as potential emotional, physical, legal and financial implications for the child. All parties should have access to further counselling throughout pregnancy and after the birth.

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 oppose the "new pathway".

However, should it take effect, I would agree with (1), and would add that all parties involved should be required to take independent legal advice as individuals, not as groups or couples. The advice should lay out potential legal and financial implications for each party clearly and impartially, as well as potential legal and financial implications for the child. All parties should have access to independent legal advice throughout pregnancy and after the birth.

77 Consultation Question 69:

Other

Please provide your views below:

I oppose the "new pathway". However, if it is adopted, I would agree with (1), (2), and (3).

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, nobody should become a surrogate without having been through pregnancy and birth before.

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 oppose the "new pathway". However, if it is adopted, there should absolutely be a maximum - I would suggest 2.

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.

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

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

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

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

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

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

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

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

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

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

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

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

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

Please provide your views below:

This question demonstrates the unethical nature of the surrogacy regime you're proposing. I can't say "no" because it seems clear that in the scenarios you're talking about, where women are becoming surrogates for money, they should be entitled to compensation for injury and trauma arising from pregnancy and childbirth. But the potential for these injuries, and for the emotional injuries which should also be on the list, from post-natal depression to PTSD, is one of the reasons we should not be seeking to expand the use of surrogacy in the UK.

Please provide your views below:

I am opposed to commercial surrogacy. It should not be possible for intended parents to pay surrogates more than their actual essential costs, supported by receipts.

Not Answered

Please provide your views below:

I am opposed to commercial surrogacy. It should not be possible for intended parents to pay surrogates more than their actual essential costs, supported by receipts.

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 another question that demonstrates the unethical nature of the surrogacy regime you're proposing. I can't say "no" because it seems clear that in the scenarios you're talking about, where women are becoming surrogates for money, they should be entitled to life insurance against the risk of death through pregnancy or childbirth. But this risk is one of the reasons we should not be seeking to expand the use of surrogacy in the UK.

89 Consultation Question 81:

Please provide your views below:

I am opposed to commercial surrogacy. It should not be possible for intended parents to pay surrogates more than their actual essential costs, supported by receipts.

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 surrogacy. It should not be possible for intended parents to pay surrogates more than their actual essential costs, supported by receipts.

Not Answered

Please provide your views below:

I am opposed to commercial surrogacy. It should not be possible for intended parents to pay surrogates more than their actual essential costs, supported by receipts.

Please provide any views below:

I am opposed to commercial surrogacy. It should not be possible for intended parents to pay surrogates more than their actual essential costs, supported by receipts.

91 Consultation Question 83:

Please provide views below:

I am opposed to commercial surrogacy. It should not be possible for intended parents to pay surrogates more than their actual essential costs, supported by receipts.

Not Answered

Please provide your views below:

I am opposed to commercial surrogacy. It should not be possible for intended parents to pay surrogates more than their actual essential costs, supported by receipts.

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 commercial surrogacy. It should not be possible for intended parents to pay surrogates more than their actual essential costs, supported by receipts.

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 commercial surrogacy. It should not be possible for intended parents to pay surrogates more than their actual essential costs, supported 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 commercial surrogacy. It should not be possible for intended parents to pay surrogates more than their actual essential costs, supported by receipts.

95 Consultation Question 87:

Please provide your views below:

I am opposed to commercial surrogacy. It should not be possible for intended parents to pay surrogates more than their actual essential costs, supported by receipts.

96 Consultation Question 88:

Other

Please provide your views below:

I am opposed to commercial surrogacy. It should not be possible for intended parents to pay surrogates more than their actual essential costs, supported by receipts.

If further payments are legalised, I would agree that the terms should be enforceable by the surrogate.

Yes

Please provide your views below:

I am opposed to commercial surrogacy. However, if payment becomes legal and enforceable, I agree that the ability to do so should not be dependent on the surrogate complying with any terms of the agreement relating to her lifestyle.

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:

No

Please provide your views below:

Yes

Please provide your views below:

Yes

Please provide your views below:

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.

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?

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:

107 Consultation Question 99:

Other

Please provide your views below:

108 Consultation Question 100:

Please provide your views below:

Please provide your views below:

Yes - this should be treated the same as an international adoption, for safeguarding / anti-trafficking reasons.

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:

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:

If either of the intended parents is a pregnant woman or a nursing mother, then they should be included. If they are not, it's not clear to me why they would need such facilities.

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 provude 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 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:

Midwifery should always prioritise the health and wishes of the birth mother and the health of 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:

The potential for women to be coerced into surrogacy arrangements needs consideration - if commercial surrogacy is legalised, how does current legislation prevent women from being pressured into surrogacy? Surrogacy seems to me at least as significant a decision as e.g. donating a kidney, and for that reason should be prohibited on a commercial basis.

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 am extremely disappointed by your approach to this consultation. Your proposals pose three significant questions:
(1) Should we change the law so that the intended parents, rather than the surrogate mother, are the legal parents of a child conceived by surrogacy by default?
(2) Should we change the law so that women can be paid for surrogacy?
(3) Should we change the law so that there is no requirement for either of the intended parents to be genetically related to the child?

It would have made much more sense to ask these three questions in plain English up front, supplemented if necessary by the rest of the consultation, and reach out to a wide audience including groups representing women's and children's rights, as the people with the biggest potential negative impacts from the changes you're proposing. Instead you've gone for a consultation paper which will be intimidating to a lot of people because of its language and size. Worse, you've framed most of the questions in a very leading way. The consultation comes across as designed to support the rights and interests of intended parents over those of the children and of the women who will be most affected by this legislation.

This is especially worrying because 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.

There is no clarity at all on whether or how these considerations were taken into account in developing the proposals, or on how the risks described will be mitigated if the proposals are adopted. You do not seem to have done any equality impact assessments, which might have picked these issues up.

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?

[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?

- I am a teacher in a deprived area. Our families are mostly poor. I see the things that poverty drives people to do and I see how vulnerable the single and poor mothers are. I want there to be fewer opportunities to exploit poor women, not more.

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

I myself cannot have children and so I know how painful this is. Yet I never believed I was entitled to children. No one is entitled to have a baby and no one is entitled to rent another human being's body to this end.

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

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 f 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

Paragraph 18.22

Response ID ANON-2V7F-Y8V9-5

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 14:26:57

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?

Social worker

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 has potential for the worst kind of exploitation and abuse of vulnerable women and trafficking of children. The children born of these arrangements require the most rigorous legal framework and assessment that can only be met by the high court.

Please provide your views below:

Cases should not be heard by a judge lower than one acting as a high court judge

9 Consultation Question 2:

Please provide your views below:

As surrogacy becomes more popular and therefore potentially open to abuse, safeguards should be increased, so I would welcome all surrogacy cases being heard by a 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:

There should be no changes that expedite removal of parental responsibility from the birth mother or allocation of PR to non birth parents

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:

The principles of law relating to children in England and Wales are governed by excellent and well tested principles set out in the children act. There is no good reason to alter these principles in the matter of surrogacy or any other matter. The birth mother should remain the sole person with automatic parental responsibility, as is currently the case with any other newborn baby. Such a change proposed would create inequality between biological fathers who cannot obtain PR until the birth is registered, and people who may have no biological connection to the child but who would nevertheless obtain automatic PR at birth.

15 Consultation Question 8:

Yes

Please provide your views below:

Certainly for all surrogacy cases detailed records should be kept in order that surrogate born children can trace their origins should they wish to.

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?

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:

After giving birth a woman is at higher risk for mental health difficulties. Even in a mentally healthy woman it is still a vulnerable time. There should be no expectation that the birth mother must take any positive action to retain sole parental responsibility. This would be highly vulnerable to exploitation of women who may have English as a second language, poor literacy or difficulty with beaurocracy for any other reason.

19 Consultation Question 12:

No

Please provide your views below:

I do not agree with the initial proposal.

20 Consultation Question 13:

No

Please provide your views below:

This entire process is flawed. By your own admission you accept that women may lack capacity to consent to surrogacy or to ceding parental responsibility. Therefore any changes that make it easier for people to exploit such women must not go ahead.

21 Consultation Question 14:

No

Please provide your views below:

A surrogacy clinic cannot be responsible for assessing the welfare of any baby born through their actions. This would be a conflict of interest and not in keeping with the principles of the children act.

22 Consultation Question 15:

No

Please provide your views below:

I object to the proposed system of objection in principle

Yes

Please share your views below:

There should be no difference between babies born of married surrogate mothers and any other married woman. If the presumption of parenthood is a flawed legal principle then it should be addressed for all babies, not just those born in surrogacy.

23 Consultation Question 16:

Other

Please provide your views below:

The intended parents should not be the legal parents automatically; however a specific parental order should be granted if the surrogate consents to allow the intended parents to become the legal parents.

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:

Intended parents should apply to the court for a parental order in such circumstances

26 Consultation Question 19:

No

Please provide your views below:

This is not legally possible, if the intended parents die before the child is born and is legally granted personhood, they cannot be legally registered as the child's parents.

Please provide your views below:

2)

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?

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:

no

Please provide your views below:

they should not

40 Consultation Question 33:

No

Please provide your views below:

If these organisations existed to make profit (which it is inevitable that they would) the whole system would be at risk of abuse and exploitation of vulnerable women and potential harm to children. Profit must not feature in organisations that exist to regulate children's welfare.

No

Please provide your views below:

see above

No

Please provide your views below:

41 Consultation Question 34:

Please provide your views below:

I do not support this

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?

Other

Please provide your views below:

If they existed they should of course be non profit but just because an organisation is non profit, doesn't mean people don't profit. Charities and non profits still need to pay staff and there is therefore money to be made, meaning that the motives cannot remain child focused.

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 not happen

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:

This should not happen

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:

the idea that unregulated organisations could match and facilitate surrogacy is nightmarish

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:

criminal

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:

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:

Surrogacy arrangements must ALWAYS be unenforceable. The idea that the state could force a woman to hand over a baby she has birthed without having met the legal threshold for permanent separation as set out in the children act is abhorrent.

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:

Again - if profit is to be made, ethics will be ignored.

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:

see above

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:

No, certainly not

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:

yes

57 Consultation Question 49:

Yes

Please provide your views below:

Please provide your views below:

yes

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:

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

63 Consultation Question 55:

Yes

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:

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:

No

Please provide views below:

International surrogacy arrangements should be against the law but if they do take place, they can only be considered valid if the child is genetically related to one of the intended parents. If not this becomes simply child trafficking

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:

This would sanction child trafficking

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:

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:

yes, and there should be a maximum number of births permissible prior to being a surrogate, for example 3

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:

A woman should not be able to carry indefinite numbers of surrogate babies due to the risk to her own health and life, and the potential impact on any other children she may have. a maximum of 2 is reasonable.

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:

81 Consultation Question 73:

Please provide your views below:

clothing, travel, food when travelling, private medical appointments, missed work, costs for existing children if required

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:

yes

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:

Please provide your views below:

in the case of permanent physical harm incurred through pregnancy and birth

a fixed fee set by the regulator (operating as a cap on the maximum payable), or

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:

gifts should have a maximum monetary 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:

If a woman can be paid, it allows for vulnerable and financially straightened women to be exploited for reproductive labour. Surrogacy must NEVER be commercialised.

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:

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?

No

Please provide your views below:

International surrogacy must not be sanctioned by UK law as it is far too open to exploitation, coercion and trafficking

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:

see above

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?

Yes

Please provide your views below:

107 Consultation Question 99:

No

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?

Yes

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:

intended parents by definition cannot be pregnant women so this question makes no sense

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 provude 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:

No

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:

OUR SITUATION

We are a male same sex couple, who have gone through an informal surrogacy agreement with a friend, who was happy to conceive a child for us. Our friend is the biological mother of our child and one of fathers is the biological father. Our relationship broke down some time before the birth and mother refused to let us be present at birth, or let us have any involvement prior the birth.

The surrogate mother did not hand our daughter over to us when she was born, and applied to the Courts shortly after birth to gain full custody of our daughter. She also registered the child without a father's name. A long High Court case followed, which ruled that the child should reside with the intended fathers and the biological mother to have twice a month supervised contact for 90 minutes.

No specific payment terms were agreed with the mother, except that we will help her out with costs that are incurred for the pregnancy. Eventually, after the breakdown of the relationship, the surrogate demanded payments without justifying it.

The Court ordered for the biological father to be included in the birth certificate. Because of current laws and the way the Court order was made, the second father does not appear on the birth certificate. Which is terrible for our daughter as when she will eventually be able to read her birth certificate, she may feel like her other father has had less recognition. In such complex cases, there should be a remedy.
During the court case, there was evidence that the surrogate has had an ulterior motive, and the pregnancy was never intended for the intended parents. We hear from others, that in countries where there are support agencies, the surrogates are vetted to ensure that everyone is 100% committed.

We therefore strongly support the proposals that:

- There be regulated agencies responsible for vetting and preparing surrogates
- The terms of a surrogacy agreement should be required to be recorded in writing
- The financial elements of a surrogacy agreement should be enforceable
- The court should have a power to make a parental order without the surrogate's consent if that is in the child's best interests.

OUR EXPERIENCE

Prior to this arrangement we attended a few meet-ups of surrogate mothers, in various church halls, or community halls, but we did not bond with any possible surrogate. The whole experience felt a bit like a clandestine meeting, bit underground. We also felt like we had to parade ourselves, almost like a competition where intended parents are chosen based on gut feelings.

We felt at the time, that we desperately needed a professional organisation who would guide us through the journey and make things as smooth as possible, as it is a very nerve wracking and emotional journey for both surrogate and intended parents.

We explored options abroad, but all routes were closed down by then, except for USA, which for cost reasons, we decided against.

During the pregnancy, there was no organisation to support us and whilst the NHS staff were excellent, the overall feeling was that it's best to be discreet about the surrogacy. No member of staff would ever use the word: surrogacy, or intended parents, or offering the support of professional organisations. Had it been noted by the staff that this was a surrogacy agreement,

probably we would have been alerted by the staff that our baby was due to be born. Instead the surrogate kept it secret and we found out about the births through friends.

OUR RECOMMENDATIONS

1. NHS bodies should have a record of babies that are due to be born through surrogacy agreements, so that all parents can attend the births, and that the surrogate mother is supported in case of a disagreement, but so too, the intended parents and support staff is available at such a joyous moment as the birth, in case of disagreements.

2. Transparent and regulated surrogacy agencies that can act as a point of first contact for both surrogates and intended parents. We therefore support the proposals for regulated surrogacy agencies, and a clear pathway of steps for parents and surrogates to follow.

3. 4. Payment terms should be flexible, to suit the need of every surrogate. After all, they will be going through some inconvenience and loss of income. These should be drafted with the help of organisations, so that both sides feel comfortable. To be clear we think surrogates should be able to charge a fee or be compensated if they wish, and this should all be dealt with transparently. We were very vulnerable as intended parents because of the dire shortage of UK surrogates and the lack of a safe regulated process, and we think the law should do everything possible to encourage genuine surrogates to come forward so that other parents don't end up going through what we did.

5. Regulated agencies should be able to vet surrogates and intended parents, to make sure that they are emotionally ready and prepared for the journey ahead.

6. There are more and more diverse family setups and a birth certificate should include all parents, if that is the agreement or a Court orders so. Also, regulations should change so that it can be amended as many times as Court orders so.

Response ID ANON-2V7F-Y8U7-2

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 14:27:09

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:

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:

Yes. All 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.

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 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.
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:

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

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:

Yes. 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:

No. The Intended parents should not be documented as the legal parents at birth.
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. 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.

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:

OTHER

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:

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.

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:

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.
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

19 Consultation Question 12:

Other

Please provide your views below:

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

20 Consultation Question 13:

No

Please provide your views below:

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

21 Consultation Question 14:

No

Please provide your views below:

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

22 Consultation Question 15:

No

Please provide your views below:

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.

Yes

Please share your views below:

YES

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:

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.

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?

No

Please provide your views below:

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.

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?

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

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:

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.

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:

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.
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:

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

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:

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

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.

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:

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.

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

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:

OTHER

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:

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:

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.

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:

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:

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.

Other

Please provide your views below:

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.

Other

Please provide your views below:

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 Consultation Question 34:

Please provide your views below:

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.

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:

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.

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:

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.

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:

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.

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 that 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?

Yes

Please provide your views below:

YES

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

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:

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.

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:

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

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:

YES

55 Consultation Question 47:

Yes

Please provide your views below:

YES

Other

Please provide your views below:

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.

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:

YES

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.

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:

YES

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:

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.

No

Please provide your views below:

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.

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

64 Consultation Question 56:

No

Please provide your views below:

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.

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:

OTHER

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

67 Consultation Question 59:

No

Please provide views below:

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.'

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:

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.'

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

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:

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.

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:

YES

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:

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.

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:

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?

73 Consultation Question 65:

Other

Please provide your views below:

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?

Other

Please provide your views below:

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?

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Other

Please provide your views below:

OTHER

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:

OTHER

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:

OTHER

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

77 Consultation Question 69:

Other

Please provide your views below:

OTHER

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

Please provide your views below:

OTHER

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:

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.

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

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:

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:

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'.

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:

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.

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:

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.

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:

OTHER

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

Other

Please provide your views below:

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.

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:

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

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

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:

Not Answered

Please provide your views below:

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.

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:

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

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:

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.

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:

OTHER

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

107 Consultation Question 99:

No

Please provide your views below:

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

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 provude 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:

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.aspx

Response ID ANON-2V7F-Y8UU-Z

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 14:37:43

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:

I am a lawyer in private practice

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:

No I do not need the response to be confidential

Chapter 6: The parental order procedure

8 Consultation Question 1:

Other

Please provide your views below:

Judges need specialism in this area and so I think all cases should start in the HC. However if they are straightforward, e.g from the USA, they could be transferred to the County Court level for circuit judges. However we need judges who are dedicated to this work, it is not day to day stuff.
We do need a system however of earlier hearings for international surrogacy cases given the delays in the High Court.

Please provide your views below:

see above

9 Consultation Question 2:

Please provide your views below:

The lay magistrates can only deal with the most straightforward cases, if any. Where there is no consent/conditional consent or there are complications, the case should be heard by a circuit judge. It is essential if the cases stay at magistrates level that dedicated clerks and magistrates deal with them.

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:

it is important for Intended parents to have PR from the start, particularly given the delays in cases

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:

in agreeing with this, it is essential that the safeguards include everyone knowing what they are signing up to

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:

Other

Please provide your views below:

I agree with most of this but the time must be more than 6 weeks for the surrogate to be able to challenge

19 Consultation Question 12:

Yes

Please provide your views below:

20 Consultation Question 13:

Yes

Please provide your views below:

21 Consultation Question 14:

No

Please provide your views below:

I don't think we can remove the need for a properly and professionally undertaken welfare assessment

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:

it should not proceed in the new pathway and the IPs should have to apply for a parental order

26 Consultation Question 19:

No

Please provide your views below:

Please provide your views below:

yes I agree with this

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:

additional factors are around contact with the surrogate and her family, and life story work and its completion and the impact of the surrogacy throughout the child's life

31 Consultation Question 24:

Please provide your views below:

as above

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

33 Consultation Question 26:

No

Please provide your views below:

I don't know how this PR would be evidenced. I think if it's outside the pathway, PR has to be conferred by the court.
If there was some way a PR agreement with the surrogate would work that might be an option.

34 Consultation Question 27:

Yes

Please provide your views below:

I would only comment that it's difficult to prove intent to apply so that aspect needs more thought I think

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:

but I make the point again the time period needs to be reasonable and anything less than 6 weeks is not reasonable in my view

36 Consultation Question 29:

Please provide your views below:

I think there need to be restrictions around not being allowed to change name, apply for a passport or take the child out of the country

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:

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:

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?

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:

although with some concern given the errors that we know have occurred in the fertility cases where the clinics were not able to ensure that consent was properly taken or recorded

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?

Other

Please provide your views below:

I am not sure. I think the agreements could be enforceable but that does not mean in every case they would be enforced. I am uncertain about the right way through this.

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:

it seems to me to be right that people should be able to charge for this and provide professional advice

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?

Other

Please provide your views below:

sorry I don't want to answer this question after all but cannot remove the choice

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 think the same arrangements as with other birth certificates including adoption should apply

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:

as above

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?

Other

Please provide your views below:

the arrangements should be the same as for other children subject to proceedings including adoption

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:

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:

this is difficult as part of me says yes but on the other hand if we remove the 6 months, people will just wait for ever and that's not ideal
we need some way to keep the 6 months but the court can allow an application after that time with leave

perhaps we could have different time limits for domestic and international surrogacy - i.e. shorter for domestic

63 Consultation Question 55:

Yes

Please provide your views below:

Yes

Please provide your views below:

the court must be able to make a parental order when needed if the surrogate does not consent if that is in the overall best interests of the child.

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:

No

Please provide views below:

these cases should proceed outside the pathway

Please provide views below:

no
these cases should come out of the pathway

Other

Please provide views below:

I don't know the right answer here as for me it depends on which country the surrogacy is done in, e.g different factors apply to the USA and to other countries

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:

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:

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:

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?

Yes

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:

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:

yes
all professional and medical and legal expenses

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:

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:

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?

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:

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?

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:

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 provude 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:

we need to be very clear that surrogates and intended parents know the position on succession law and are advised what steps they need to take to protect the child

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:

This is difficult to answer, it would be based on a time cost serviced. The legal advice about the arrangement itself is likely to be about 2 hours of advice, but the negotiation of an agreement is difficult to say as it depends on how complicated it is and if the advice is needed about general contents or to do the whole agreement. I would be happy to provide confidential information about charging rates but don't want to put that here

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?

Individual, counsellor by profession

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? [redacted]

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

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 f 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

Paragraph 18.22

Response ID ANON-2V7F-Y8TQ-U

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 14:49:12

About you

1 What is your name?

Name:
Mary Morrissey

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:

Law Society of Scotland

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:

n/a

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

International and domestic surrogacy arrangements present opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are the most serious human rights issues and therefore should be overseen by a senior and experienced judge.
There have already been convictions in Australia of men who commissioned surrogate pregnancies for the purpose of sexual abuse and exploitation, and carried out the most serious and abuse of those children.

Please provide your views below:

International and domestic surrogacy arrangements present opportunities for the sale, abuse and trafficking of children and the exploitation of birth mothers. These are the most serious human rights issues and therefore should be overseen by a senior and experienced judge.
Under no circumstances would it be appropriate to have such cases dealt with by lay 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:

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 of the child and that the child's best interests are paramount consideration. These are decisions that should never 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 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 that the birth mother to have legal parenthood and parental responsibility when the child is born and that her consent in giving up the child must be freely given. This is an important safeguard against the sale of children and the exploitation of birth mothers should apply equally to surrogacy arrangements both in an international and domestic context.
This proposal would set a dangerous precedent for all women, all mothers, all children, and all of the implications need to be understood. There is no evidence 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.

On a personal level, as a mother, it is grotesquely unreasonable to expect a (probably working class) postpartum woman, suffering the physical and psychological effects of just having given birth, to find a lawyer and make application to a court to assert her rights to the child in the short time allowed. The practical effect of this is to strip her of all rights to her own child, and deny her any right of redress.

15 Consultation Question 8:

Other

Please provide your views below:

I 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 disagree with the proposals for the "new pathway".

18 Consultation Question 11:

No

Please provide your views below:

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.
On a personal level, as a mother, it is grotesquely unreasonable to expect a (probably working class) postpartum woman, suffering the physical and psychological effects of just having given birth, to find a lawyer and make application to a court to assert her rights to the child in the short time allowed. The practical effect of this is to strip her of all rights to her own child, and deny her any right of redress.
* https://www.ohchr.org/EN/Issues/Children/Pages/Surrogacy.aspx

19 Consultation Question 12:

Other

Please provide your views below:

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
10
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
11
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:

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 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 do not agree to 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 do not agree 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 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 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 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 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 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 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.
Surrogacy organisations whether "not for profit" or profit making, will driven by financial considerations, the need to cover costs and salaries and the desire to expand into recruiting more women to become surrogates.
The consultation references surrogacy as being comparable to prostitution in that it is exploitation of female biology for the profit and benefit of others, at high cost to women ; the surrogacy organisation in this model is a state sanctioned pimp.

Other

Please provide your views below:

It is abhorrent that any organisation or person should derive profit or payment of wages from the exploitation of women and the sale and trafficking of children.

Other

Please provide your views below:

This is window dressing. We known that money corrupts; the organisation will have a direct conflict of interest with securing the rights, health and wellbeing of women and children. This has been the experience in every other country. The wishes and desires of the commissioning persons will inevitably be prioritised over the safety and wellbeing of the mother and baby.
We do not allow commercial harvesting of organs for transplant, for this reason. Only the poor and marginalised would consider selling those organs, and it is they who will suffer injury and death as a consequence. So it is with surrogacy and commercial surrogacy in particular. You cannot reasonably expect the organisation to police their own practices. .

41 Consultation Question 34:

Please provide your views below:

This is window dressing. We known that money corrupts; the organisation will have a direct conflict of interest with securing the rights, health and wellbeing of women and children. This has been the experience in every other country. The wishes and desires of the commissioning persons will inevitably be prioritised over the safety and wellbeing of the mother and baby.
We do not allow commercial harvesting of organs for transplant, for this reason. Only the poor and marginalised would consider selling those organs, and it is they who will suffer injury and death as a consequence. So it is with surrogacy and commercial surrogacy in particular.

Please provide your views below:

As preceding answer.

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.
I would also add that it is nonsense to propose that an organisation self regulate; the wishes of those commissioning parents will be prioritised over the safety and well being of women.

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:

Whether non-profit or not, they will be driven by financial imperatives to cover costs, salaries and outlays.
Senior staff will be aware that maximising income, expanding operations, increasing the numbers of surrogate pregnancies, will result in higher salaries for themselves and increase their own personal profiles.
Organisations will measure their success by the number of surrogate pregnancies commissioned.
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 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.
However, 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:

The information should be identifying. The child has the right to know his or her genetic parentage.

57 Consultation Question 49:

Yes

Please provide your views below:

Please provide your views below:

The child should have the right to identifying information regardless of the consent of the 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:

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:

Yes, should be recorded.

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:

Both parents must be UK domiciled to prevent surrogacy tourism.

Please provide your views below:

Both parents must be UK domiciled.

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 disagree with the new pathway.

67 Consultation Question 59:

No

Please provide views below:

I disagree with the new pathway. A genetic link must be retained. Surrogacy is never a "medical necessity".

Please provide views below:

If there is no genetic link, the surrogacy is not more than the creation of a child for adoption. It is likely to be an attempt to circumvent the rigorous safeguarding and assessment procedures that accompany adoption, or an attempt to "breed" a child to the personal preferences of the commissioning parents, which is abhorrent.
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:

There is never a medical necessity for a surrogacy.
There must be a genetic link to the child for a parental order; if not, an adoption can be sought and would require to be assessed for suitability in the same way as all adoptions are.

70 Consultation Question 62:

Please provide your views below:

There is never a medical necessity for surrogacy; surrogacy should be made unlawful as it is a violation of the rights of women and children. .

Please provide your views below:

as above

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. At 18, the brain is not fully formed, and in particular is unlikely to have fully mature decision making abilities.

73 Consultation Question 65:

Other

Please provide your views below:

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?
In addition to that, the woman must have given birth before. How can a woman of 18 who has never given birth have any understanding of what is involved, and how she is likely to experience bonding with the baby and the pain of giving it up?

Other

Please provide your views below:

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?
In addition to that, the woman must have given birth before. How can a woman of 18 who has never given birth have any understanding of what is involved, and how she is likely to experience bonding with the baby and the pain of giving it up?

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’.
I would add that no woman entering a surrogacy agreement is acting in a place of informed consent as she does not how she will experience the pregnancy and birth and the giving up of her child to persons she may barely know or even may never have met.
Applying commercial contractual considerations to a human life and the intimate human processes of pregnancy and birth is disrespectful to women and contrary to human dignity.

77 Consultation Question 69:

Other

Please provide your views below:

Screening will be of limited value. It is estimated that those convicted of sex offences against children have on average offended 20 times before they are caught and prosecuted.
Surrogacy is an attractive pathway for men who wish to procure a child for abuse. As there is no mother or maternal relatives to protect the child, and the adoption safeguarding and screening is absent from the proposed "new pathway". Two men in Australia have already been convicted of the most serious sexual abuse of babies and children acquired through surrogacy for that purpose. Even with criminal record screening, the same issues are likely to arise.

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

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.
I notice that at least one woman has already died giving birth to a surrogate baby, leaving her own children orphaned. Natasha Caltabiano died giving birth as a surrogate for a couple aged 48 and 42 who already had 5 children of their own. This should never have been allowed to happen.

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:

As above

Not Answered

Please provide your views below:

Neither.

Please provide any views below:

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

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

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

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

95 Consultation Question 87:

Please provide your views below:

am opposed to paid surrogacy because it commercialises women's reproductive functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.
There is rising inequality in the UK and any payments above the reimbursement of the most 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:

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:

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:

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:

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:

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:

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.

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 provude 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:

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.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

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

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 f 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

Paragraph 18.22

From: [redacted]
To: surrogacy
Subject: Re: Surrogacy Consultation - New Pathway
Date: 15 October 2019 13:21:04

Dear [redacted]

Yes, please, I would like it to e considered an addendum.

Thank you

[redacted]

> On 15 Oct 2019, at 10:19, surrogacy <surrogacy@lawcommission.gov.uk> wrote:
>
> Dear [redacted],
>
> Many thanks for your email and for your interest in the surrogacy project. I note that you emailed a Word Document response on 10 October 2019. Would you like for your email below to be considered as an addendum to your Word Document response, and therefore treated as part of your formal response to the consultation?
>
> If so, please note that we may publish or disclose information provided to us in a consultation response, including personal information. For example, we may publish extracts of responses in Law Commission publications, or publish a response in its entirety. We may also share any responses received with Government. Additionally, we may be required to disclose the information, such as in accordance with the Freedom of Information Act 2000.
>
> If you would like information that you provide to be treated as confidential please contact us, although we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic disclaimer generated by an IT system will not be regarded as binding on the Law Commission. The Law Commission will process your personal data in accordance with the General Data Protection Regulation, which came into force in May 2018.
>
> If you would like further information about the progress of the surrogacy project, this will be available on our website at: https://www.lawcom.gov.uk/project/surrogacy/
>
> Thank you for your engagement with our work.
>
> Yours sincerely
>
> [redacted] | Law Commission
> Research Assistant | Property, Family and Trusts Law Team
> 1st Floor, Tower, Post Point 1.53, 52 Queen Anne's Gate, London SW1H 9AG
> (access via 102 Petty France)
> [redacted] | Web: www.lawcom.gov.uk
> For information about how we handle your personal data, please see our Privacy Notice
>
> -----Original Message-----
> From: [redacted]
> Sent: 11 October 2019 14:50
> To: surrogacy <surrogacy@lawcommission.gov.uk>
> Subject: Surrogacy Consultation - New Pathway
>
> Good afternoon
>
> I have submitted my main response to the consultation, but here are some additional thoughts.
>

> The consultation appears to be aimed at those who would directly gain from surrogacy, either financially or through gaining the child they very much want. But this runs the risk of some of the adverse consequences of surrogacy not being analysed, let alone given due weight in law. The consultation should begin with the fundamental question of whether surrogacy is ethical and if so, in what circumstances.
>
> Legislation should not be written with the ideal scenario in mind i.e. a surrogacy arrangement where there is mutual respect and agreement between all parties, and the process goes without a hitch. Instead, legislation should protect the most vulnerable parties, especially in less than ideal scenarios. The proposed new pathway fails to do this and is a step backwards for children's and women's rights
>
> The most vulnerable party in a surrogacy arrangement is the child and they have no choice in the matter. The welfare of the child should be paramount.
>
> By transferring parental responsibility to the commissioning parents at birth, the baby may be denied contact with his or her birth mother. Newborn babies become familiar with their mother's voice and heartbeat during pregnancy, and once born, they also find her smell comforting. Newborn babies have a strong instinct to stay close to their birth mothers (regardless of whether they are genetically-related) and separation is stressful, with possible long-term adverse effects for the child.
>
> It's possible that some surrogacy arrangements would be less detrimental to the child than others. For example, an altruistic arrangement between two sisters, who both play an important ongoing role in the child's life, might prove to be less traumatic than a commercial arrangement in which the child never sees their birth mother following the transfer of parental responsibility. In the latter situation, children born to surrogate mothers would also have to deal with the difficult truth that their birth mother carried them, gave birth to them and gave them up in return for a sum of several thousand pounds. More research is needed into the long-term effects of surrogacy on the child and this should be central to any new legislation. In the consultation questions discussing the transfer of parental responsibility, I have not seen any mention whatsoever of how the process might be made easier for the child.
>
> Surrogate mothers also need protection from exploitative surrogacy arrangements. Fertility treatment, pregnancy, birth and the post-natal period are extremely vulnerable times in a women's life. The proposed new pathway does not recognise this and expects mothers who change their mind about giving up their babies to make a legal objection to the court within five weeks of the birth. This shows a complete lack of understanding of the physical and emotional challenges many women face when recovering from childbirth, plus the surrogacy arrangement is likely to put severe pressure on women who are having doubts.
>
> There also needs to be consideration of the fact that IVF pregnancies (especially those involving donor eggs) tend to be higher risk for both mothers and children than natural pregnancies.
>
> Commercial surrogates tend to be vulnerable in other ways, too. They are usually in a much weaker financial position than the commissioning parents and tend also to have lower levels of education. The financial agreement itself creates a power imbalance, and in practice makes it more difficult for the surrogate mother to assert her rights or to express her concerns.
>
> I strongly believe that commercial surrogacy is always unethical and should not be legal in the UK. It is exploitative and contrary to human dignity in the same way that selling kidneys from live donors would be. In fact, selling one's kidney is arguably more ethical, as the process does not involve an additional human being who cannot consent.
>
> I understand that the UK government is concerned about British commissioning parents entering into exploitative or poorly-regulated surrogacy arrangements abroad. However, the solution should be to tighten up the laws that allow intended parents to "buy" these children abroad and bring them back to the UK. It would not be ethical to water down UK laws designed to protect children, in order to make UK surrogacy more attractive to intended parents.
>
> The proposed new pathway will benefit solicitors, agencies, private fertility clinics and intended parents, including those who want to bypass the adoption process. It would be detrimental to children, vulnerable or impoverished women and the NHS.
>
> Yours faithfully
>

> [redacted]
>
>
>
> _____
> This e-mail and any attachments is intended only for the attention of the addressee(s). Its unauthorised use, disclosure, storage or copying is not permitted. If you are not the intended recipient, please destroy all copies and inform the sender by return e-mail. Internet e-mail is not a secure medium. Any reply to this message could be intercepted and read by someone else. Please bear that in mind when deciding whether to send material in response to this message by e-mail. This e-mail (whether you are the sender or the recipient) may be monitored, recorded and retained by the Ministry of Justice. Monitoring / blocking software may be used, and e-mail content may be read at any time. You have a responsibility to ensure laws are not broken when composing or forwarding e-mails and their contents.

Response ID ANON-2V7F-Y8UG-J

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 14:56:13

About you

1 What is your name?

Name:
Dr Wendy Norton

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:

Centre for Reproduction Research
De Montfort University
Leicester

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

Other

If other, please provide details:
My responses are based on the findings of my PhD (completed in 2018) which explored UK resident gay men's use of surrogacy to become parents. I am therefore only able to answer the consultation questions that directly relate to my research enquiry.

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 6: The parental order procedure

8 Consultation Question 1:

No

Please provide your views below:

Participants who pursued surrogacy overseas had been able to establish their parental rights within those countries, and source all the necessary paperwork to gain the child's entry into the UK. Participants felt that the level of court involvement back in the UK was unnecessary and there could be an easier and quicker means by which their legal parental status could be recognised within the UK.

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:

Many participants in my study felt that there should be a “presumption in favour of the intended parents”, whilst still offering “some protection for the surrogate”. Participants were in agreement that a “reversal of the current situation” would be beneficial in which intended parents were recognised as the legal parents but surrogates have the right to contest this within a defined time period.

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:

Yes

Please provide your views below:

My study participants recognised a need to balance the rights of all parties involved in the surrogacy arrangement and suggested that the surrogates retain the right to contest this arrangement but wanted to see their legal parentage established as soon after the birth as possible, as the child was in their care at that time.

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:

Yes

Please provide your views below:

Participants in my study were concerned about another man being legally recognised as the legal parent of the child. Men had specifically looked for a woman who was single, to be their surrogate, to safeguard against her spouse or civil partner being registered as a legal parent. This concern regarding a lack of recognition of the intended father as the genetic parent often took precedence over other selection criteria when looking for a surrogate. This proposal is to be welcomed.

Not Answered

Please share your views below:

23 Consultation Question 16:

Yes

Please provide your views below:

Participants emphasised the importance of the intended parents being seen as the "true parents" throughout the surrogacy journey and in all scenarios.

Yes

Please provide your views below:

Participants emphasised the importance of the intended parents being seen as the "true parents" throughout the surrogacy journey and in all scenarios.

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:

Participants emphasised the importance of the intended parents being seen as the "true parents" throughout the surrogacy journey and in all scenarios.

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:

Participants emphasised the importance of the intended parents being seen as the "true parents" throughout the surrogacy journey and in all scenarios.

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:

There was a consensus amongst my participants that the surrogate should have parental responsibility "up until the baby was born" and that parental responsibility be switched to the intended parents directly after birth, who will be caring for the child, with some caveat whereby the surrogate could flag any concerns within a stated time period.

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:

The participants in my study who chose a traditional surrogacy arrangement reported feeling as vulnerable during the process as those intended parents who chose a gestational surrogacy, and would have liked more support and legal protection during the process. The proposed new pathway provides an equitable approach and pathway for all intended parents.

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:

The lack of any UK regulation in relation to surrogacy arrangements was a concern for the majority of participants. Regulating surrogacy organisations would help to develop a national standard of support for all intended parents and enable signposting of intended parents and surrogates to recognised, reputable surrogacy organisations.

Other

Please provide your views below:

There needs to be some baseline standards across regulated surrogacy organisations, who can then develop their service in the way they see fit, so clients have a choice as to which service / approach best suits their individual needs.

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?

Other

Please provide your views below:

Participants in my study acknowledged that money does "change hands" during non-commercial surrogacy arrangements, and were happy to pay for appropriate services, but they wanted all costs to be transparent.

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:

The intended parents I interviewed felt very vulnerable during the surrogacy process, and wanted to see changes brought about that would safeguard their rights. Participants commented that “it doesn’t matter what forms you fill in, whatever you agree isn’t legally binding which is quite scary”. Participants were concerned that at the end of the surrogacy process the surrogate could change her mind and “keep the baby, which is massively unfair”. All my study participants were concerned about current surrogacy contracts being unenforceable. However, whilst this was a key area of concern that they felt needed to be addressed, they were undecided about what changes could realistically be made to offer them the protection they wanted whilst not being seen to exploit the surrogate in any way.

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:

Participants in my study acknowledged that money does "change hands" during non-commercial surrogacy arrangements, and were happy to pay for appropriate services, but they wanted all costs to be transparent.

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:

The data collection period for my part-time PhD study was 2012-2014 when fewer gay men were seeking surrogacy in the UK, than reported in recent trends. However, at that time there was a general perception amongst my participants that there were very few surrogates available in the UK, and as the UK surrogacy laws prevented surrogates advertising their services, and intended parents advertising their need for a surrogate, the participants had difficulty identifying how they might make contact with potential surrogates. This restriction on advertising to find a surrogate, and the extended time the men anticipated this might take, was often reported as the reason for some participants to decide on an international surrogacy arrangement. Removing the current restrictions on advertising in relation to surrogacy arrangements is welcomed.

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?

Not Answered

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?

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 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:

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?

Other

Please provide your views below:

Whilst the participants in my study acknowledged the complex legal issues involved with a surrogacy arrangement, and wanted to ensure that surrogates were also fully informed of their legal situation, not all men sought professional legal advice. The additional expense associated with employing lawyers for UK surrogacy seemed to have influenced men's decisions whether to access professional legal support. However, many men were resourceful in accessing informal legal advice through websites and attending surrogacy and parenting conferences.

The legal consultation requirements prior to signing an agreement, and associated costs needs be clear and transparent.

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:

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:

Participants in my study acknowledged that money does "change hands" during non-commercial surrogacy arrangements, and were happy to pay an agreed amount for help in creating their family.

However, there were mixed views about the level / type of payment. Some participants felt that being able to pay a woman for the service of undertaking a surrogacy arrangement was acceptable, and may encourage more women to offer to be surrogates, and result in the UK providing more legislation / regulation around surrogacy, which was seen as a positive move forward. However, other participants reported concerns that if surrogacy became more "commercial", the costs may become unaffordable for many intended parents.

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?

Yes

Please provide your views below:

A key recommendation from my study, based on my participants' experiences, was the need for more accessible, impartial and accurate guidance on surrogacy as a path to parenthood, In particular, clearer guidance on the documents required to exit the surrogacy destination country, who to contact to obtain this information, and the possible time allowances for collecting and validating this required documentation. Guidance on how long parents such expect to stay in the overseas country in order to obtain passports and visas to be able to return home would also be beneficial, as well as practical advice on having help with childcare arrangements whilst attending these appointments.

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:

Yes

Please provide your views below:

Participants who pursued surrogacy overseas had been able to establish their parental rights within those countries, and source all the necessary paperwork to gain the child's entry into the UK. Participants felt that the level of court involvement back in the UK was unnecessary and there could be an easier and quicker means by which their legal parental status could be recognised within the UK.

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 provude 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:

Short Form Questionnaire: Law Commissions' Surrogacy Consultation



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? Surrogacy UK- Information community support

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

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

What is your email address?
[redacted]

What is your telephone number?
[redacted]

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	**YES**
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	**YES**
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	**YES**
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**
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	**No**
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	**This might pose a problem in term sof the surrogate changing her mind, due to an emotional attachment to the baby. I don't agree with traditional surrogacy.**
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 independent surrogacy would work if the surrogate is a family member or a close firned, howveer with strangers this would increase the risk of the intended parents being blackmailed financially or emotionally by the surrogate threatening to keep the child. This would put the intended parents in a vulnerable position.**
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	**I think single surrogate mothers would be preferable, however this would reduce the number of surrogate mothers available. Therefore, yes, counseleling would be agood idea.**
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	**YES**
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	**Only if a third party organisation or lawyers are involved.**
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	**Not sure about this. I think there must be a safe place for advertisement, or else both surrogates and intended parents will be ina vulnerable position of being tartgeted by the small minded public and even exploited.**
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	**More than 4 IVF failures, absence of uterus and underlying medical condition that endangers the life of the intended mother.**
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	**1**
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**
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 to both.**
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	**Yes**
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 to both.**
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**
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**
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	**3**
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 to both**
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 to both**
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 to both**
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	**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	**Yes**
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 and 2**
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	**1 and this should be decided between IPs and surrogates.**
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	**Cant think of any.**
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, if both parties agree.**
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	**If both parties agree.** **Yes** 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	**If both parties agree.**
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	**The law must protect both the IPs and the surrogates, but it must also put the child's needs first. It would be good to have a law which states that when the IPs and surrogate agree before the process starts that the IPs will be the legal parents to the child born through surrogacy, then a contract will be drawn up and the surrogate cannot change their mind.**

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**.

Response ID ANON-2V7F-Y8F8-M

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 15:02:03

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:

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 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 of 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 international and domestic contexts.

This proposal would set a very dangerous precedent for all women, mothers and 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 above all.

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

15 Consultation Question 8:

Other

Please provide your views below:

I 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 six weeks and is shorter in Scotland. I cannot agree with the proposal to give the birth mother less than five weeks to object. The first six weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. During childbirth, the mother may experience significant blood loss leading to anaemia, and if she has a caesarean must then recover 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:

OTHER
I profoundly disagree with the proposals for the 'new pathway' – particularly with the proposal that 'intended parents' would acquire 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.*

* 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 with the proposal that 'intended parents' would acquire 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 six weeks and is shorter in Scotland. I cannot agree with the proposal to give the birth mother less than five weeks to object. The first six weeks after childbirth are recognised as the most rapid period of physical, physiological and emotional change that takes place in healthy human life. During childbirth, the mother may experience significant blood loss leading to anaemia, and if she has a caesarean must then recover 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 interests. 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. Pregnancy, birth and post-partum changes are intense physical and existential experiences that bond mothers to their newborn child, priming them for the enormous challenge of raising the infant 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 commitment to the child. 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. Initial investment of financial resources does not in any way prepare you for the practical reality of caring for a newborn child and the long road of nurturing 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 reason enough for an outright rejection of this proposal.

It must not be overlooked that this proposal also represents a significant change in legal parenthood rules and would therefore have implications for all children and all families. It should not be introduced without a full assessment of impacts on the rights of all mothers and children. There is no evidence that the law commissioners have carried out any such assessment to date.

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. T

he 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:

All surrogacy arrangements risk resulting in:

- the sale and/or trafficking of children
- the exploitation/coercion of the birth mother
- the exploitation of women's reproductive capabilities.

The court should therefore always have oversight of the arrangements.

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. But 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 above all.

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

34 Consultation Question 27:

Not Answered

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 interests being of 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. But 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 above all.

* 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 interests being of 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 interests being of 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.

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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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 categorically disagree with this proposal and the opening up of surrogacy in this country, which I consider a violation of the human rights of both women and children.

The idea of organisations charging to facilitate surrogacy 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.

We are living in a time of increasing poverty and inequality, and as such it would be unethical to promote being a 'surrogate' mother as a solution to an impoverished woman's financial problems.

If this proposal is implemented, Facebook and Google are likely to present surrogacy adverts to female students and young women suggesting that becoming a ‘surrogate’ could provide a solution to any financial worries they are experiencing. The most disadvantaged young women in society would be hugely vulnerable to such advertising.

Once again, one must make plain the parallels between prostitution and surrogacy: both blatantly commodify women's bodies. They are harmful situations, both physically and psychologically, and and as such should never be advertised as a potential 'job' or 'choice' to girls and 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. 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 interests being of 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 facilitating:

- the sale of children
- the erosion of mothers’ rights
- a diluting of the fundamental 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 children resulting from a surrogacy process have access to information about their origins. The proposals in question 47 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 the exploitative 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 the exploitative 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 wish 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 wish to see it banned, I support the provisional proposal above in current cases of surrogacy.

72 Consultation Question 64:

No

Please provide your views below:

I am opposed to surrogacy and wish to see it banned, on the grounds that 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 made more accessible, 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, the maximum age limit for 'intended parents' should be 40.

Any age limits in surrogacy 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.

It is now widely understood, thanks to research by neuroscientists, that people do not fully mature until the age of 25. At age 18 the brain's prefrontal cortex, which helps us regulate and inhibit impulsive behaviour, is not yet fully developed. It's common knowledge that teenagers make ill-thought out decisions and allowing 18 year-olds to sign up to become surrogates is plainly not the action of a civilised society that undertakes to safeguard children and young adults.

73 Consultation Question 65:

Other

Please provide your views below:

I am opposed to surrogacy per se and would like to see it banned on the grounds that it is 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 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.

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 would be more appropriate.

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 infants and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

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

I would like to see a total ban on surrogacy in the UK, as there is 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 infants and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

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

I would like to see a total ban on 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 infants and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

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

I would like to see a total ban on 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 infants and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

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

I would like to see a total ban on surrogacy in the UK, as there is 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 infants and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

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

I would like to see a total ban on surrogacy in the UK, as there is 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 infants and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

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

I would like to see a total ban on surrogacy in the UK, as there is 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 horrifying 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, while others have profound ongoing fear of vaginal penetration well after childbirth, 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.

Blood loss in childbirth due to placental haemorrhage can be very significant, and can potentially result in an 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 by researchers is a real risk to a mother receiving transfusions. 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 (or conversely, may present immediately after childbirth).

How could we possibly ensure that women suffering these complications are sufficiently 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 appalled 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 more financial compensation for surrogacy, having been through severe birth trauma.

All of the above illustrates just some of the physical and psychological 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 infants and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it 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:

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 infants, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential and basic expenses will act as an incentive to poor women to engage in surrogacy when it 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 these risks are why I am opposed to it.

89 Consultation Question 81:

Please provide your views below:

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

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

I would like to see a total ban on surrogacy in the UK, as there is 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 infants, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

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

I would like to see a total ban on surrogacy in the UK, as there is in Spain. 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 infants, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

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

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

Please provide any views below:

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

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

I would like to see a total ban on surrogacy in the UK, as there is 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 oppose the payment of birth mothers for their 'services'. This question illustrates the grave risks of surrogacy.

91 Consultation Question 83:

Please provide views below:

I oppose the payment of birth mothers for their 'services'. This question illustrates the grave risks of surrogacy and attempting to put a price on women's bodies and their reproductive capacities. It is a grave violation of the human rights of both women and children.

Not Answered

Please provide your views below:

I oppose the payment of birth mothers for their 'services'. This question illustrates the grave risks of surrogacy and attempting to put a price on women's bodies and their reproductive capacities. It is a grave violation of the human rights of both women and children.

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 infants and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

There is rising inequality in the UK and any payments above the reimbursement of the most essential 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.

If surrogacy is accepted, however, legislation should make it clear that the only payments that should ever be made are essential and basic expenses for which receipts are provided.

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.

If surrogacy is accepted, however, legislation should make it clear that the only payments that should ever be made are essential and basic expenses for which receipts are provided.

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:

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:

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:

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:

No

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 provude 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 wealthy or of high status. This in 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 and well-being of the birth mother and her 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, prior to designing this consultation, law commissioners had already decided to consider surrogacy a positive issue and that 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 CLASS 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 can 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, as 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.

This consultation is confusing and it does not conform to the government's consultation guidelines. There are too many questions, they are too detailed and many vital questions – such as whether one thinks surrogacy can ever be considered ethical - are not posed at all.

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?

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: na

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

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 f 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

Paragraph 18.22

Response ID ANON-2V7F-Y8JW-Q

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 15:06:21

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:

Cafcass

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?

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 6: The parental order procedure

8 Consultation Question 1:

No

Please provide your views below:

Our practitioners see a wide range of international surrogacy arrangements and feel that not all of them need to be before a high court judge. We support greater flexibility, with the option for more complex cases to be transferred if needed.

Please provide your views below:

Our practitioners see a wide range of international surrogacy arrangements and feel that not all of them need to be before a high court judge. We support greater flexibility, with the option for more complex cases to be transferred if needed.

9 Consultation Question 2:

Please provide your views below:

Under current arrangements, we support parental order cases being heard by lay justices as complex cases are rare and there is the opportunity for cases to be transferred if needed.

If the new pathway is introduced, judges will be seeing more complex cases that have been contested or have not used the pathway, and there could therefore be an argument for these cases to be heard at a higher 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:

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:

15 Consultation Question 8:

Yes

Please provide your views below:

Yes, there should be a duty to keep a record of arrangements under the new pathway as this is part of the child's life history.

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:

Other

Please provide your views below:

We have some concerns about the period in which to raise objections. The proposed timeframe is the opposite of current legislation, whereby the surrogate's consent is only valid when it is given at least six weeks after the child's birth. Our practitioners are concerned about the scale of this proposed change and the impact it may have on the child's welfare where there are medical complications or the surrogate experiences mental ill health. One option could be to extend the registration period for children who are born through surrogacy.

19 Consultation Question 12:

Yes

Please provide your views below:

Yes, we agree this would be in the best interests of the child.

20 Consultation Question 13:

Yes

Please provide your views below:

21 Consultation Question 14:

Other

Please provide your views below:

We are cautious about completely removing the post-birth assessment.

The current post-birth parental order process allows for a child-led decision and analysis by a qualified social worker, involving the child, intended parent(s) and surrogate. Our practitioners can meet with the intended parent(s) with their child to see the interaction, as well as ensure that the surrogate continues to consent freely and unconditionally.

We would welcome further information on the pre-conception assessment and the qualifications and training required for the person undertaking this assessment. We recommend this person should be a qualified social worker.

22 Consultation Question 15:

Yes

Please provide your views below:

We agree that the surrogate's spouse or civil partner should not continue to be the child's legal parent or a respondent, and that this should be the case in any new pathway and outside of the pathway.

There would need to be a specific reference to the child not being a child of the family and that presumption being overturned in cases of surrogacy.

No

Please share your views below:

We agree that the surrogate's spouse or civil partner should not continue to be the child's legal parent or a respondent, and that this should be the case in any new pathway and outside of the pathway.

There would need to be a specific reference to the child not being a child of the family and that presumption being overturned in cases of surrogacy.

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:

We agree that the parental order route is an appropriate route and would allow for a child-led assessment.

26 Consultation Question 19:

Yes

Please provide your views below:

We support the intended parent(s) being registered subject to the surrogate not objecting and, outside of the pathway, we support option 1 as being in the child's best interests.

Please provide your views below:

We support the intended parent(s) being registered subject to the surrogate not objecting and, outside of the pathway, we support option 1 as being in the child's best interests.

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:

Oversight of the new pathway should be administrative, with the judicial contribution only arising at the point where the parties do not agree and the surrogate withdraws her consent, or in the other cases that fall outside of the new pathway.

30 Consultation Question 23:

Please provide your views below:

The welfare checklist does not need amending as the welfare of the child being paramount allows the court to consider the particular circumstances which led to the birth 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:

We agree with amending section 10 to allow intended parent(s) to apply for section 8 orders.

33 Consultation Question 26:

Other

Please provide your views below:

There would need to be some sort of administrative process to provide the evidence that they intend to apply for a parental order. But we agree that it is in the child's best interests for the adult(s) they live with to have parental responsibility, to make decisions for the child in the event of any emergencies.

34 Consultation Question 27:

Yes

Please provide your views below:

Yes, it is in the child's best interests for the adult(s) they live with to have parental responsibility, to make decisions for the child in the event of any emergencies.

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:

The current law says that each person can act unilaterally in relation to most decisions about a child. The only instance where this may cause a problem would be if the parent(s) wanted to circumcise the child or wanted to agree to major medical treatment and the surrogate objected. Should this happen, it would be resolved through existing court processes.

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, it's in the child's interests to be supported by the new pathway, with the intended parent(s) and surrogate have access to appropriate advice and support.

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:

It's in the child's interests to be supported by the new pathway, with the intended parent(s) and surrogate having access to appropriate advice and support.

There will always be people who make arrangements outside of any pathway or agency, but introducing a new process provides an opportunity to consider how best to engage parents and potential surrogates. The new pathway would be offering more than the parental order process in terms of security and support during the pregnancy, which should be seen as advantageous to both the intended parent(s) and surrogate. But people with independent arrangements may still prefer a parental order if it is cheaper or if they feel secure in the independent arrangements they have made.

Please provide your views below:

It's in the child's interests to be supported by the new pathway, with the intended parent(s) and surrogate having access to appropriate advice and support.

There will always be people who make arrangements outside of any pathway or agency, but introducing a new process provides an opportunity to consider how best to engage parents and potential surrogates. The new pathway would be offering more than the parental order process in terms of security and support during the pregnancy, which should be seen as advantageous to both the intended parent(s) and surrogate. But people with independent arrangements may still prefer a parental order if it is cheaper or if they feel secure in the independent arrangements they have made.

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:

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:

Agreements are helpful but the parental order process, with court and social work oversight, is the most appropriate means to resolve contested arrangements.

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:

We agree but on a non-profit making basis.

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:

We agree it would help if organisations could promote the pathway as an alternative to independent arrangements as long as this remained within the non-profit restrictions.

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:

We recommend being open with children about their origins from the beginning, though recognise this is a decision for each parent to make.

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:

Subject access request rules currently exclude HFEA, so specific provision would be required to recognise this.

55 Consultation Question 47:

Yes

Please provide your views below:

We agree but recognise that the information is not accessible in some jurisdictions.

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:

It would be in the child's best interests to have access to this information.

57 Consultation Question 49:

Yes

Please provide your views below:

We agree and would welcome further information on who would provide the counselling to the child.

Please provide your views below:

We support option 2. Access to this information should not be dependent upon parental consent. In the pathway, the parent(s) should be informed of this prospect when they enter into the agreement.

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:

We agree. It's in the child's best interests to encourage applications to be made as soon as possible, but the law shouldn't discourage or prohibit parents from seeking a parental order outside of a timeframe.

63 Consultation Question 55:

Not Answered

Please provide your views below:

We agree that this is in the child's best interests in the limited circumstances in which this occurs. It remains a power, not a duty, so the court has a discretion which is important to retain.

Not Answered

Please provide your views below:

Re (2), we note there would not be another legal parent if the proposal regarding the surrogate's partner is successful.

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

64 Consultation Question 56:

Yes

Please provide your views below:

We agree with the addition of habitual residence and would recommend a qualifying period of six months.

Please provide your views below:

We agree with the addition of habitual residence and would recommend a qualifying period of six months.

65 Consultation Question 57:

Please provide your views below:

We consider that the qualifying categories should not be removed as the intention is for the applicants to be parents. However, the act could usefully define who would come within the definition of an enduring family relationship and include two people who decide to co-parent. The birth of the child should be in as secure an arrangement as possible and an enduring family relationship should be evidenced by the applicants.

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:

Other

Please provide views below:

A genetic link is a crucial part of surrogacy arrangements and guards against potential exploitative reasons for creating a child. Removing this genetic connection is a fundamental shift and would potentially put the surrogacy assessment process at odds with the more thorough process for fostering or adopting a non-genetically linked child.

We would welcome further information on the scenarios the Law Commission intends this to provide for, and whether there are any potential unintended consequences.

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?

Other

Please provide views below:

If this were to be considered it would need to be subject to the other parent's consent as it would have an impact on the child to know that the parent did not consent to their birth.

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:

Not Answered

Please provide your views below:

72 Consultation Question 64:

Yes

Please provide your views below:

The consideration should be whether they have capacity to meet the needs of the child throughout their childhood, and the lifelong impact on the child of the age of the parents. And this would be consistent with there being no upper age limit on parental orders.

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:

Not Answered

Please provide your views below:

Please provide your views below:

75 Consultation Question 67:

Yes

Please provide your views below:

Yes, we agree with surrogates and intended parents being appropriately supported and advised prior to conception. We agree that the counsellor should be appropriately trained.

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:

Yes, we agree with surrogates and intended parents being appropriately supported and advised prior to conception.

77 Consultation Question 69:

Other

Please provide your views below:

We would welcome further information on the process for undertaking these checks as we know from our experience that risks may be identified as part of the parental order assessment process. There would need to be a simple procedure for obtaining an enhanced criminal record certificate and a decision on who, in the surrogacy process, the records should be disclosed.

The surrogacy agency should ensure that the assessments are carried out by social workers who can properly assess risk arising from information from the criminal record check.

Please provide your views below:

We agree that the list of offences in the case of adoption is appropriate.

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:

We agree that there should not be a maximum number of surrogate pregnancies that a woman can undertake.

We have experience of surrogate parents commissioning multiple surrogacies at the same time/in short succession and suggest that the Law Commission considers a restriction on the number of concurrent commissions to ensure the welfare of the children.

Chapter 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

Not Answered

Please provide your views below:

We have seen cases where large sums of money are paid to the surrogate, beyond expenses, and others where no money at all is paid. Our view is that it is not in the child's best interests for surrogacy to be undertaken for financial gain. There needs to be some scrutiny around payments, and clarity as to what is expected.

81 Consultation Question 73:

Please provide your views below:

We have seen cases where large sums of money are paid to the surrogate, beyond expenses, and others where no money at all is paid. Our view is that it is not in the child's best interests for surrogacy to be undertaken for financial gain. There needs to be some scrutiny around payments, and clarity as to what is expected.

82 Consultation Question 74:

Please provide your views below:

We have seen cases where large sums of money are paid to the surrogate, beyond expenses, and others where no money at all is paid. Our view is that it is not in the child's best interests for surrogacy to be undertaken for financial gain. There needs to be some scrutiny around payments, and clarity as to what is expected.

83 Consultation Question 75:

Please provide your views below:

We have seen cases where large sums of money are paid to the surrogate, beyond expenses, and others where no money at all is paid. Our view is that it is not in the child's best interests for surrogacy to be undertaken for financial gain. There needs to be some scrutiny around payments, and clarity as to what is expected.

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:

We have seen cases where large sums of money are paid to the surrogate, beyond expenses, and others where no money at all is paid. Our view is that it is not in the child's best interests for surrogacy to be undertaken for financial gain. There needs to be some scrutiny around payments, and clarity as to what is expected.

Actual lost earnings should be considered an expense.

85 Consultation Question 77:

Please provide your views below:

We have seen cases where large sums of money are paid to the surrogate, beyond expenses, and others where no money at all is paid. Our view is that it is not in the child's best interests for surrogacy to be undertaken for financial gain. There needs to be some scrutiny around payments, and clarity as to what is expected.

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

Please provide your views below:

We agree that such compensatory payments should be permitted, with this being set by the regulator to safeguard the adults involved.

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:

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:

We have seen cases where large sums of money are paid to the surrogate, beyond expenses, and others where no money at all is paid. Our view is that it is not in the child's best interests for surrogacy to be undertaken for financial gain. There needs to be some scrutiny around payments, and clarity as to what is expected.

The pathway should provide for the surrogacy agency to be informed about the level of payment and specifically that any exchange of money should be for reasonable expenses, but that in addition the surrogate should be able to receive modest gifts.

90 Consultation Question 82:

Not Answered

Please provide your views below:

As for 72, our view is that it is not in the child's best interests for surrogacy to be undertaken for financial gain. If there is to be a set figure for compensation we would support this being set by the regulator to ensure equality.

a fixed fee set by the regulator.

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:

We support equality but as previously, our view is that it is not in the child's best interests for surrogacy to be undertaken for financial gain. If there is to be a set figure for compensation we would support this being set by the regulator to ensure equality.

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?

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:

Our practitioners who work primarily in complex and international parental orders told us that some international arrangements, particularly in the US, already follow a similar pathway and are well regulated. It felt anomalous to them that these arrangements would still be required to go through the court process. But equally they acknowledged that for other less well-regulated international processes the court scrutiny would be required and is a vital safeguard for the child.

107 Consultation Question 99:

Not Answered

Please provide your views below:

This would resolve current issues of children being 'stateless' or 'parentless' but how would it would in practice and how would it guard against the exploitation of international surrogates?

There would be a substantial monitoring role required, particularly for less well known/established arrangements.

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 provude 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:

There is a risk that the child will not have anyone with parental responsibility in this jurisdiction and this creates a sense of insecurity and anxiety. The delay in obtaining a final order can be damaging to the family and in particular there can be difficulties in relation to international arrangements.

120 Consultation Question 112:

Please provide your views below:

Please provide your views below:

121 Consultation Question 113:

Please provide your views below:

The requirement of a genetic link separates the arrangement from adoption and justifies the relatively light touch assessment and regulation of the birth of children through surrogacy. The impact on the child is that this contributes to their sense of identity.

The removal of the genetic link could have consequences for the child in terms of their identity.

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?

Non]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 Yes
- 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 Yes
- 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.

N/A

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.

Paragraph 8.57

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.

Paragraph 8.77

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 derive 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.

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

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

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

1.101 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. 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.

1.102 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. 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.

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

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

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

1.104 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.

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

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

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

1.110 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 f 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

Paragraph 17.56

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.

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

Paragraph 18.22

Response ID ANON-2V7F-Y8UQ-V

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 15:09:50

About you

1 What is your name?

Name:
Dr Katarina Trimmings and Dr Michael Wells-Greco

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:

Dr Katarina Trimmings
Aberdeen University

Dr Michael Wells-Greco
Maastricht University and Charles Russell Speechlys

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:

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

Given the complexities inherent in international surrogacy arrangements and for the reasons set out by the High Court judges (para 6.38), international surrogacy arrangements should continue to be automatically allocated to a judge of the High Court. Moreover, this should not have a negative impact on the workload of the High Court judiciary as it should be anticipated that the reform as a whole will lead to a reduction in the numbers of international surrogacy arrangements.

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

Both categories of domestic surrogacy cases which will continue to require a post-birth parental order (as set out in paras 6.44 and 6.45 respectively) should be treated in the same way and should be heard by circuit judges rather than a panel of lay justices. This will allow for building up expertise in surrogacy arrangements through the ticketing system, as noted in para 6.48.

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:

We support the proposal in Chapter 8 that all intended parents automatically acquire parental responsibility if the child is living with or being cared for by them. However, should that proposal not be supported by consultees, then the court should consider whether to make an order granting the intended parents parental responsibility at the first directions hearing in the proceedings. The listing of the first directions hearing should be prompt.

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:

(2) If the proposal in Chapter 8 that all intended parents automatically acquire parental responsibility if the child is living with or being cared for by them is not supported by consultees, then we support the above proposal that in Scotland 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.

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

14 Consultation Question 7:

Yes

Please provide your views below:

Agree. The proposed framework on legal parenthood, consisting of the new pathway to legal parenthood and the retention of the parental order procedure, represents a pragmatic compromise between the traditional approach to legal motherhood based on the gestational test and an indiscriminate use of the intent-based approach to legal parenthood.

15 Consultation Question 8:

Yes

Please provide your views below:

Agree. The provision should also set out what should be included in the records, beyond a copy of the surrogacy arrangement (e.g. a record of the surrogate's post-birth objection if applicable).

100 years; or

Please provide your views below:

The proposed period of 100 years seems reasonable. As we understand it, this period is in line with the adoption legislation. It seems logical that, in the future, potential changes in the storage requirements for adoption records will be reflected in the area of surrogacy.

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:

We believe that the use of anonymously donated gametes should be discouraged in any circumstances, including in traditional surrogacy arrangements. The rationale behind this is, as acknowledged in para 8.18, the importance to ensure that children (and adults) born through surrogacy have access to full information about their biological and genetic 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:

Given the need to strongly discourage the use of anonymously donated sperm for the reason stated above (see response to Question 10), the use of anonymously donated sperm in a traditional, domestic surrogacy arrangement should prevent that arrangement from entering into the new pathway.

18 Consultation Question 11:

Other

Please provide your views below:

(1) We believe that the surrogate's position post-birth should be strengthened. Instead of affording the surrogate a right to object to the acquisition of legal parenthood for the intended parent(s) within a specified period after birth, the surrogate should be required to actively confirm her consent post-birth.
(2) In order to keep the process relatively simple, the procedure could be administrative in nature. This could be by way of a consent form to be lodged with the court (an amended Form 101A). In the alternative, as we understand to be the practice in Israel, the surrogate could be asked by a neutral party (e.g. a trained social worker) to either confirm or revoke her consent to the establishment of legal parenthood for the intended parent(s).
(3) We find the proposed period for the right to object to be exercised too short. It is suggested that the period is to be set one week less than the relevant period for birth registration, meaning that in England the period would be 35 days and in Scotland only 14 days. This is disproportionately short, particularly in cases where the surrogate has experienced health complications following the birth and may not be able to take steps promptly to be informed of her rights and/or exercise her right to revoke her consent/exercise her right to object. In making these comments, we have given consideration to the proposal at 1.13 (Question 12).

19 Consultation Question 12:

Yes

Please provide your views below:

20 Consultation Question 13:

Other

Please provide your views below:

We query whether this proposal satisfactorily protects the interests of the surrogate. There may potentially be a conflict of interests between the surrogate and the intended parents. Therefore, it should not be left to the intended parents to make a declaration concerning the surrogate's capacity. Please see response to Question 11, in which we recommend an alternative approach whereby the surrogate would be required to actively confirm her consent to the intended parents acquiring legal parenthood post-birth. (Should the surrogate lose capacity post-birth, the case should no longer proceed in the new pathway.)

21 Consultation Question 14:

Other

Please provide your views below:

We agree that in cases that fall under the new pathway there should be no requirement for any welfare assessment of the child after his/her birth unless the court is seised to consider child arrangements or the establishment of legal parentage for an intended parent who would not be a legal parent under current law. However, in terms of how the welfare of the child should be assessed pre-conception, it seems to us that it would be helpful to have the active involvement of a trained social worker in this process to make an assessment.

22 Consultation Question 15:

Yes

Please provide your views below:

Agree.

Other

Please share your views below:

Generally, in cases outside the new pathway, the surrogate's spouse or civil partner should not be regarded as the legal parent of the child as he/she has no connection to the child – on the basis of genetics, gestation or intent. Nevertheless, it may be appropriate not to remove the status of a legal parent at birth from the surrogate's spouse or civil partner in cases where there is no surrogacy agreement in place. In such cases, the general rules on legal parenthood should apply without exception. The policy should be to encourage best practice with all the safeguards that the new pathway proposes.

23 Consultation Question 16:

Yes

Please provide your views below:

Agree.

Yes

Please provide your views below:

Agree.

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:

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:

Agree.

26 Consultation Question 19:

Not Answered

Please provide your views below:

Please provide your views below:

27 Consultation Question 20:

Yes

Please provide your views below:

Agree.

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-parent model of legal parenthood in surrogacy cases is a very attractive alternative to the proposed new pathway, and it would have been helpful if the consultation paper had explored this option in a more detail. The strength of this model is that it better reflects the factual reality of the situation and the child's origins – i.e. the surrogate being the legal parent on the basis of gestation (and potentially also genetics) and the intended parents being the legal parents on the basis of pre-conception intent (and potentially also genetics).

The legal parenthood of the surrogate could be extinguished through a relinquishment procedure that would involve a written consent by the surrogate given within a set period of time after the birth.

29 Consultation Question 22:

Please provide your views below:

UK families may move abroad and/or have other nationalities beyond being British. As the law of parentage does not join up internationally, we would hope that even if the conditions for the new pathway are satisfied, intended parents will still be able to apply for a post birth parental order as such an order may help to promote and protect the parent-child relationship status being recognised in other States.

30 Consultation Question 23:

Please provide your views below:

We see no reason to depart from the current checklist.

31 Consultation Question 24:

Please provide your views below:

We believe the following factors should be considered:

a. The parties' intentions when entering into the surrogacy agreement;
b. The child's genetic and gestational links to each of the parties to the surrogacy agreement;
c. The sibling relationships of the child;
d. The suitability of each of the parties to be fit and proper parent and/or carer of the child;
e. The ability of each of the parties to facilitate the child's relationships with other parties, should that be considered desirable;
f. The value of a stable family unit in the child's development;
g. The likely effect on the child, throughout the child's life, of the decision;
h. The likely effect of the decision on future generations;
i. The child's ascertainable wishes and feelings regarding the decision, taking account of the child's age and understanding;
j. The child's characteristics which are considered relevant, including age and sex;
k. The child's particular needs, including physical and health needs;
l. Any harm which the child has suffered or is at risk of suffering;
m. The child's emotional and/or physical attachment to each of the parties;
n. The likely psychological and emotional impact on the child of the decision;
o. The circumstances of the surrogacy agreement;
p. Potential involvement of illicit practices;
q. Transparency in financial transactions;
r. The role of intermediaries; and
s. Any other relevant consideration.

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, this would be a sensible amendment.

33 Consultation Question 26:

Other

Please provide your views below:

In principle agree, subject to the following two caveats:
1. under (2) the intended parents should be required to apply for a parental order rather than merely have the intention to apply for a parental order, and that there should be a monitoring mechanism in place to follow up whether an application for a parental order has indeed been made.
2. the proposal is unsuitable for those cases falling outside the new pathway where there is no written surrogacy agreement.

34 Consultation Question 27:

Yes

Please provide your views below:

Agree. However, see above response to Question 26 concerning the condition that the intended parents 'intend' to apply for a parental order. We believe that this condition should be strengthened.

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:

Agree.

36 Consultation Question 29:

Please provide your views below:

We do not feel that there is a need to restrict the exercise of parental responsibility. Should a dispute arise between the intended parents and the surrogate concerning the exercise of parental responsibility, this will be dealt with in the usual way: by mediation, failing which a court 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?

Yes

Please provide your views below:

Agree. The inclusion of traditional surrogacy arrangements within the new pathway may encourage parties to such arrangements not to act independently but instead engage with regulated surrogacy organisations.

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:

We do not believe that independent surrogacy arrangements should be brought within the scope of the new pathway.

Please provide your views below:

We do not believe that independent surrogacy arrangements should be brought within the scope of the new pathway.

40 Consultation Question 33:

Yes

Please provide your views below:

Strongly agree that surrogacy organisations should be regulated, and that each surrogacy organisation should have a person responsible for compliance with regulation.

Not Answered

Please provide your views below:

Not Answered

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:

Agree.

Please provide your views below:

Please provide your views below:

We believe that such person should be expected to have a child welfare/social work background. As such, they should have practical experience in the area of child and family work, and a knowledge of child welfare legislation.

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:

Agree.

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:

We believe that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements outside the new pathway otherwise activities of unregulated organisations would tacitly be encouraged.

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:

Agree. This is critical in order to ensure that personal status does not become a matter of contract law. Legal parentage should continue to be established by operation of law or judicial determination.

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:

Agree – we also suggest that there is a strong case for enabling them to do so earlier, on request by a parent and subject to safeguards (e.g. counselling).

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:

No, disagree. Given the importance of birth certificates and the situations in which they are needed (in the UK and abroad), we are concerned that a surrogacy specific marker (as is currently the case on the long-form birth certificate) may prejudice the surrogate-born child. We believe that the policy of transparency in the arrangement so that the child has an opportunity to know their origins can be promoted through (a) a general statement on all birth certificates that other information may be held elsewhere e.g. on a Parental Order Register or HFEA Register and (b) educating intended parents on the importance of openness.

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:

Yes, as we feel that the historical reason for short and long-form birth certificates is now outdated. We would, however, caution against asking too much of the birth registration system. We believe there is room for consideration of the relationship between the GRO and the HFEA Register. The GRO could inform an applicant seeking information from the GRO that other information about them may be held elsewhere e.g. on a Parental Order Register or HFEA Register.

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:

Agree – we also suggest that there is a strong case for enabling them to do so earlier, on request by a parent and subject to safeguards (e.g. counselling).

55 Consultation Question 47:

Yes

Please provide your views below:

Agree.

Yes

Please provide your views below:

Agree.

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:

Agree – albeit why limit the information only to non-identifying information?

57 Consultation Question 49:

Yes

Please provide your views below:

Agree.

Please provide your views below:

Agree.

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, as this may be of significance to such persons.

59 Consultation Question 51:

Yes

Please provide your views below:

Agree and yes.

Please provide your views below:

Agree and yes.

60 Consultation Question 52:

Please provide your views below:

Yes, as this may be important information for such persons.

Please provide your views below:

Yes, as this may be important information for such persons.

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 such person is indicated as an intended parent in the surrogacy agreement.

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:

We agree with the policy objective, however, early applications should be encouraged. We say this so that (i) the duration of any limping legal parentage is limited in time and (ii) child protection concerns may only be picked once a POR is appointed. That being so, we would propose maintaining the time limit albeit with consideration given to a 'leave to apply' mechanism or a statutory power for the court to dispense with the time limit.

63 Consultation Question 55:

Yes

Please provide your views below:

Agree.

Yes

Please provide your views below:

Agree.

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

64 Consultation Question 56:

Yes

Please provide your views below:

Agree. Additionally, we believe that the same jurisdictional filters should also apply to the surrogate mother. This will help to prevent situations where a woman with no prior connection to the UK is brought to this country for the sole purpose of surrogacy.

Please provide your views below:

For habitual residence, we believe there should be a qualifying period of residence of 1 year, in relation to both the intended parents and the surrogate (see above 1.68). This will hopefully deter 'reproductive travel'.

65 Consultation Question 57:

Please provide your views below:

(1) We do not believe that the qualifying categories of relationship in s 54(2) HFEA 2008 require reform. While there are difficulties inherent in establishing what is 'an enduring family relationship', the inclusion of such a category is significant from the child's perspective as it supports the importance of stable and lasting commitments and relationships. Although we appreciate that there are important differences between adoption and surrogacy as means of family building, it is to be noted that the qualifying categories of relationship in s 54(2) HFEA 2008 align with the categories of prospective adopters in Scotland under the Adoption and Children (Scotland) Act 2007.
(2) Two persons who are in a prohibited degree of relationship with one another should continue to be excluded from applying jointly for a parental order.

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:

Agree.

67 Consultation Question 59:

No

Please provide views below:

No, we do not agree. We share the concern of the Department for Education that moves to bring even more people into the use of surrogacy arrangements has the potential to reduce further those considering adoption. Moreover, we believe it is important to maintain the distinction between surrogacy and adoption – both domestically and in international arrangements.

Please provide views below:

No, we do not agree. We share the concern of the Department for Education that moves to bring even more people into the use of surrogacy arrangements has the potential to reduce further those considering adoption. Moreover, we believe it is important to maintain the distinction between surrogacy and adoption – both domestically and in international arrangements.

No

Please provide views below:

No, we do not agree. We share the concern of the Department for Education that moves to bring even more people into the use of surrogacy arrangements has the potential to reduce further those considering adoption. Moreover, we believe it is important to maintain the distinction between surrogacy and adoption – both domestically and in international arrangements.

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:

We believe that this requirement should be retained for both pathways.

Please provide your views below:

We support the proposal in para 12.93 of the consultation paper.

71 Consultation Question 63:

Yes

Please provide your views below:

Agree.

Please provide your views below:

Agree to all.

Yes

Please provide your views below:

Agree.

72 Consultation Question 64:

No

Please provide your views below:

We believe that there should be a maximum age limit for the grant of parental order. The age limit should take account of the probability that at least one of the intended parents could reasonably be expected to raise the child through to adulthood.

Please provide your views below:

We believe that there should be a maximum age limit for intended parents under the new pathways. A combined age of 100-110 years for couples and 50-55 years for single intended parents seems reasonable.

Other

Please provide your views below:

We believe that there should be a minimum age limit for intended parents, however, feel that it should be higher than 18 years (21, if not 25). Setting a reasonable minimum age limit will send the message that family building through surrogacy is a form of family building which requires additional consideration and preparation.

73 Consultation Question 65:

Other

Please provide your views below:

We believe that the minimum age limit for the surrogate should be higher than 18 (at least 21, if not 25). As stated above (see response to Question 64), setting a reasonable minimum age limit will send an important policy message that family building through surrogacy requires additional consideration and preparation.

Other

Please provide your views below:

We believe that the minimum age limit for the surrogate should be higher than 18 (at least 21, if not 25). As stated above (see response to Question 64), setting a reasonable minimum age limit will send an important policy message that family building through surrogacy requires additional consideration and preparation.

Chapter 13: Eligibility Criteria for the New Pathway

74 Consultation Question 66:

Yes

Please provide your views below:

Agree.

Please provide your views below:

75 Consultation Question 67:

Yes

Please provide your views below:

Agree.

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:

Agree. In terms of the costs, the intended parents should be required to cover the costs of independent legal advice for the surrogate. It may be helpful to introduce an accreditation scheme for legal practitioners who wish to advise in this specialist field of law.

77 Consultation Question 69:

Yes

Please provide your views below:

Agree.

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:

Pregnancy and labour are a major life event with potentially unexpected consequences – both physical and psychological. While every pregnancy is unique, we believe that for the consent to be informed a prior experience of pregnancy and birth is necessary. We believe that there should be a requirement that the surrogate has previously given birth as an eligibility requirement of 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:

We believe that there should be a maximum, partly on the grounds of the surrogate's physical and mental health in the immediate and longer term and partly to promote the underlying principle that surrogacy is provided on an altruistic basis.

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:

In terms of the consultation questions regarding costs, we believe the policy should promote transparency and openness about the procedures and costs involved as this might encourage more UK based intended parents to pursue surrogacy in the UK. There should be a better definition of what constitutes a 'reasonable expense', recognising that the types/amounts of expenses will vary according to individual circumstances. We also believe that there should be clear guidance as to what types of payments are not acceptable (e.g. payment for the surrogacy arrangement itself).
On balance, we think (2) is realistic.

81 Consultation Question 73:

Please provide your views below:

(1) Yes; such payments should be allowed.

82 Consultation Question 74:

Please provide your views below:

(1) Yes; such payments should be allowed.

83 Consultation Question 75:

Please provide your views below:

(1) Yes; such payments 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:

The intended parents should be able to pay the surrogate her actual lost earnings only if she is not statutorily entitled to a loss of earnings in full.

85 Consultation Question 77:

Please provide your views below:

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

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:

Compensation payments set out in (1) and (2) should not be allowed as they may disguise a payment for the transfer of the child. However, if a surrogate suffers complications such as those specified in (3), then payments to enable her to manage the immediate consequences of such complications should be permitted and should fall under 'reasonable expenses'.

Please provide your views below:

1.103. See above.

a fixed fee set by the regulator (operating as a cap on the maximum payable), or

Please provide your views below:

See above. Nevertheless, should compensation payments be introduced, then (1) seems more acceptable as allowing the parties to negotiate runs a higher risk of the compensation payment being moved to a fee payment level.

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 in place for the surrogate as part of the surrogacy agreement, payed for by the intended parents. No further compensation should be paid by the intended parents to the surrogate's family.

89 Consultation Question 81:

Please provide your views below:

We had mixed views. Intended parents should not be able to buy gifts for the surrogate as such gifts could undermine an altruistic policy. However, IPs and surrogates may build and wish to maintain relationships and it would be counter-productive to such relationships to prohibit gifts which are reasonable in nature.

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. Payments for surrogacy services render surrogacy arrangements commercial and are difficult to distinguish from payments for the transfer of the child.

a fixed fee set by the regulator.

Please provide your views below:

See above. Nevertheless, should payments for surrogacy services be permitted, then the regulator should set a fixed fee.

no other payments;

Please provide any views below:

(1) – i.e. no other payments.

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:

Agree.

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:

Agree.

Yes

Please provide your views below:

Agree.

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:

Agree.

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:

Agree.

Yes

Please provide your views below:

Agree.

Yes

Please provide your views below:

Agree.

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:

Agree. This is long overdue.

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:

Agree.

107 Consultation Question 99:

Other

Please provide your views below:

In principle, we agree with this proposal, however, the practical application of the proposal is likely to be challenging for at least two reasons: 1.) What criteria will be used by the Secretary of State for the purpose of identifying qualifying jurisdictions (e.g. payments, enforceability of surrogacy arrangements, access to origins), and how will these criteria be assessed? For example, could a system which meets UK standards with regard to payments and enforceability but not access to origins qualify? 2.) What happens in case the laws in a qualifying jurisdiction change and standards drop as a consequence? Who will be tasked with monitoring the legal landscape in the qualifying jurisdictions? Given the disparity of laws (safeguards) which exist internationally, we believe these challenges can only be mitigated by way of a bi or multi-lateral convention.

108 Consultation Question 100:

Please provide your views below:

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)

Laura McGrath

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

The Open 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

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.

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

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 f 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

Paragraph 18.22

Response ID ANON-2V7F-Y8JV-P

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 15:10:50

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.

* 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.

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 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. 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.

* 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:

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:

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.

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 provude 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:

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:

n/a

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:

Women in Northern Ireland have there human rights restricted already by being denied access to abortion. Imposing this new pathway will lead them to lose more rights and be seen even more as a commodity and not as humans.

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.

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:

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.

Paragraph 8.57

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.

Paragraph 8.77

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

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

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

1.104 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.

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

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

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

1.110 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 f 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

Paragraph 17.56

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 counties.

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. Surrogacy can never be ethical. Children are not property and should never be conceived purely to be given away. Women are not objects, we do not exist purely to enable other people to have children.

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-YJRG-1

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 15:13:12

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:

GCRM Fertility

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

Other

If other, please provide details:
[redacted] GCRM Fertility and we undertake most of the HFEA-registered surrogacy in Scotland.

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:
[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:

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

A lay justice is appropriate.

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:

Retain the existing rules.

11 Consultation Question 4:

Yes

Please provide your views below:

Provided there is good documentation of the surrogacy arrangement and all parties can show that they have spoken with a counsellor and a lawyer, then it should be a formality.

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 think currently there is too much emphasis is placed on the surrogate's rights and not enough on those of the intended parents.

13 Consultation Question 6:

Please provide your views below:

The process should be made easier for the intended parents without eroding (too much) the rights of the surrogate.

You hear stories of surrogates "holding intended parents to ransom" when it comes to handing over the baby. "I'll not contest things if you give me another £10,000". I know of one such case from a friend/colleague in London.
My personal view is that there should be a maximum "fee" e.g. £20,000. This then reduces the risk of such a scenario, and avoids the potential for getting round these areas by not giving "gifts".

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:

Retain for 21 years (my arbitrary figure but in line with obstetric records).

Another period

Please provide your views below:

21 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?

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:

No. It should be allowed.

18 Consultation Question 11:

No

Please provide your views below:

I would leave it as the applicable period of birth registration.

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:

IVF clinics cannot be asked to do a criminal records check as I'm not sure if they have the power to do so.
If they do have such power/are given such power, the cost will need to be determined and also the timescale that this can be performed. These costs will need to be passed onto the intended parents.

22 Consultation Question 15:

Yes

Please provide your views below:

Yes

Please share your views below:

23 Consultation Question 16:

Other

Please provide your views below:

If the surrogate wished it, would her name ALSO be able to be recorded somewhere because the surrogate was the "birth mother" and this has to be acknowledged somewhere because it will inevitably be traumatic for her i.e. all 3 people are recorded somewhere.

Other

Please provide your views below:

If the surrogate wished it, would her name ALSO be able to be recorded somewhere because the surrogate was the "birth mother" and this has to be acknowledged somewhere because it will inevitably be traumatic for her i.e. all 3 people are recorded somewhere.

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:

If the surrogate wished it, would her name ALSO be able to be recorded somewhere because the surrogate was the "birth mother" and this has to be acknowledged somewhere because it will inevitably be traumatic for her i.e. all 3 people are recorded somewhere.

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:

No. as per my responses above, some mechanism ought be put in place where all 3 parties can be recorded.
This is probably at variance with my views on the surrogate's name going on the extended birth certificate when the surrogacy progresses smoothly (so I'm being a bit inconsistent!).

26 Consultation Question 19:

Yes

Please provide your views below:

Please provide your views below:

If both intended parents die before the birth, then there should still be facility for their names to go on the birth certificate.
It should be for the courts to decide who brings up the child e.g. the intended parents' parents (i.e. the grandparents). The surrogate can contest this as per existing legislation and the courts thereafter can decide.
If there are no forthcoming "parents", and the surrogate doesn't want to bring up the child, then the baby can be put up for adoption.

27 Consultation Question 20:

Yes

Please provide your views below:

You would have to PROVE THAT the second intended parent was given sufficient time to oppose the first intended parent's decision.
It should in any case be apparent from the legal paperwork created beforehand what the intentions were.

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:

Once legal parenthood is granted, the surrogate's name comes off the birth certificate and the other intended parent's name goes on it.

If it is a single man intentionally bringing up a baby on his own, the surrogate's name should still come off the birth certificate and it is up to the child when he/she is 18 years old to trace the surrogate (as per existing HFEA legislation). In fact, in any case it may be that the single man (the intended parent) and the surrogate would already have agreed that there will be contact beforehand.

Personally I am opposed to the surrogate's name going on the EXTENDED birth certificate.
I believe this opens up a whole can or worms for cases where donor eggs or donor sperm was used because it could then be argued that the name of the gamete donor should go on the extended birth certificate of donor-conceived children and I would be opposed to this.

29 Consultation Question 22:

Please provide your views below:

I think all surrogacy cases should be able to provide proof that they have spoken with a lawyer and also with a trained counsellor.

If greater checks are required (criminal record stuff) then it will have to be clear who is responsible for doing it, the pathway to get these checks performed and the costs. "Time is money" and the time taken by clinics/surrogacy agencies to do them and the costs incurred, have to be reflected in costs that are charged to the intended parents.

30 Consultation Question 23:

Please provide your views below:

It's difficult to say if having any genetic link should have some bearing on whether this influences any disputes (I personally think it should not).
I would leave things as they are and if there is a dispute, it should be on a case-by-case basis and assessed in the Family Law Courts.

31 Consultation Question 24:

Please provide your views below:

As above, I don't think having any genetic link should have any bearing on whether this influences any disputes. I would leave things as they are and if there is a dispute, it should be on a case-by-case basis and assessed in the Family Law Courts.

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'm not sure what "without leave" means, but I do think that the intended parents should have more immediate rights in surrogacy cases.

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:

That's fair enough.

36 Consultation Question 29:

Please provide your views below:

At this stage the surrogate will probably still have the baby. However, there should be no restrictions placed on the intended parents (other than the ones that currently exist).

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 still get confused by the terminology and people/patients use “traditional” and “gestational” interchangeably, which provides huge opportunity for confusion.

We would prefer to call it “full” surrogacy and “partial” surrogacy.

“Full” surrogacy is where the “full” genetic material comes from the intended parents, and none of genetic material comes from the surrogate.
“Full” surrogacy would also include cases where the baby is created from say donor eggs and the sperm of male partner of the intended parents. It would also include the proposed acceptance of “double donation” (i.e. donor eggs and donor sperm) because none of genetic material comes from the surrogate.

“Partial” surrogacy is where “part” of the genetic material comes from the surrogate i.e. it’s her eggs.

I believe there is much less scope for confusion if we adopt “full” and “partial” surrogacy as the nomenclature.

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. I am a clinician in an IVF unit that facilitates surrogacy.

39 Consultation Question 32:

Please provide your views below:

Definitely (but I don’t think it’s possible to enforce this).
There is undoubtedly lots of surrogacy that goes “under the radar”, but it is certainly preferential to have it all “legally” above board.

Please provide your views below:

I don’t think it’s possible to enforce this.
If you had a surrogacy case that went “under the radar”, and then it came to seeking a parental order, I’m not sure that it’s in the baby’s interests to not grant a parental order and have the baby put into care (nobody wins, not least the State which would then have to shoulder the burden of child care).

40 Consultation Question 33:

Yes

Please provide your views below:

No

Please provide your views below:

There should be certain standards within which these agencies should have to work and they should be overseen/inspected by an external body e.g. CQC (England) or HIS (Scotland)…or the dreaded HFEA!

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:

This seems sensible to – just as we, in the IVF world, have to do with the HFEA.

Please provide your views below:

The criminal records checking (if that isn't already part of the reqd remit).

Please provide your views below:

I'm not sure you can be prescriptive about the "ideal" person but someone with a Quality management background might be appropriate.

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:

I'm not involved with surrogacy agencies but to make them "not-for-profit" is a rather nebulous term.
What a Chief Executive of a charity gets paid is up to the Board of that charity. Whilst the charity might not make a "profit", obviously what salaries are paid out affects their bottom line at the end of the financial year (there's a whole stooshie going on just now about the pay of charity chief execs!).

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:

Opportunity to meet is the only stipulation.
Beyond that, it's up to the intended parents and the potential surrogate to discuss between themselves about the proximity of the surrogate to the intended parents etc.

With "partial" surrogacy, when it comes to "matching", if the surrogate is of a different ethnic origin to the intended parents should not matter.

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:

This would be impossible to enforce.
As above, if you had a surrogacy case that went "under the radar", and then it came to seeking a parental order, I'm not sure that it's in the baby's interests to not grant a parental order and have the baby put into care (nobody wins, not least the State which would then have to shoulder the burden of child care).

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'm not sure this can be made a "crime" as it would be impossible to enforce.
The facilitator could simply say, "I introduced Couple X to Jane-Doe and what they did thereafter was up to them ...nothing to do with me".
If the facilitator received cash in a brown envelope, it would be impossible to prove that monies changed hands.

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'm always reluctant to give the HFEA yet more power but I have to concede that they are probably the most appropriate regulatory authority already in existence!

Please provide your views below:

As above, it would follow similar lines to HFEA inspections for IVF units.
My concern is that the quality of the HFEA inspections are so variable. From personal experience, what is considered "acceptable" for one IVF unit with one inspector, is then "unacceptable" for another IVF unit with another inspector!

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:

I do think that if there is a dispute, too much weight/power currently lies with the surrogate and this has to be redressed (somehow).

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 think an upper limit of say £5000 should be set for the Surrogacy Agency (I'll leave the actual sum to the Law Commission).
Otherwise, if intended parents can ONLY go through an accredited agency, agencies have a monopoly and can set any fees they like. Even if the agencies are competing with each other, there is a potential for a cartel-like situation to develop, which would only be to the intended parents' disadvantage.

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:

Whilst I agree that IT IS BEST THAT a child grows up knowing that they were conceived through surrogacy, to make this explicit on a birth certificate is opening up the whole egg donation/ sperm donation disclosure thing.
If it became law that "surrogacy" went on the birth certificate, then it would inevitably lead to court cases where "egg donation/ sperm donation" would have to go on the birth certificate as well.

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:

Maintain the status quo.

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:

This is effectively the same as for children conceived with donor gametes.

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. This is effectively the same as for children conceived with donor gametes.
..but as with donor-conceived children, the (intended) parents have to have told the child in the first place, otherwise the child would not know to consider looking for such information on a national register.

57 Consultation Question 49:

Yes

Please provide your views below:

This is effectively the same as for children conceived with donor gametes.

Please provide your views below:

Only if the surrogate has also agreed to this.

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:

The same laws should apply as for those existing for donor-conceived children.

However, in cases of "full" surrogacy, it doesn't matter if Boy X wants to marry Girl Y, even if they had the same birth mother (i.e. the same surrogate).

59 Consultation Question 51:

Yes

Please provide your views below:

..but this is contingent on knowing that they were born through a surrogacy arrangement in the first place.

Please provide your views below:

Only if the law changes and the surrogate is compelled by law for her identity to be made available.

60 Consultation Question 52:

Please provide your views below:

Yes – but this is contingent on the young person knowing that they were conceived through a surrogacy arrangement.

Please provide your views below:

No - not necessary.
It would only be applicable if the law changes and the surrogate is compelled by law for her identity to be made available.

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.

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 appears to often be exceeded anyway!

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:

Yes... but difficult to define/enforce (HMRC have fights all the time with people not paying taxes in the UK who claim not to be domiciled in the UK!).

Perhaps the test should be that (one of) the intended parents is a UK tax payer.

Please provide your views below:

As above, perhaps the test should be that (one of) the intended parents is a UK tax payer.

65 Consultation Question 57:

Please provide your views below:

Option (2).

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:

I'm not sure what this is getting at.
If it's double-donation in a "domestic" surrogacy arrangement is that:
"the surrogate's eggs and another man's sperm (e.g. her husband) and the baby is then handed to the intended parents"?

This is effectively then becoming a baby-farm and selling babies to couples. This is a step too far (and I'm a libertarian).

Yes

Please provide views below:

Yes. This is then minimising the potential for "baby-farming".

However, it would be very hard to prove, other than by genetic testing of the baby and the intended parents.
If it was found that there was no genetic link, it is then a case of "adopting from abroad".
Would the courts turn down the application, and if so where would the baby be placed? I suppose there is no end of infertile couples looking to adopt a baby so if intended parents knew that the child would be taken from them if there is no genetic link, it would be a disincentive to go to an overseas "baby farm" in the first place.

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'm not sure what this Question means.

Please provide your views below:

It is very hard to be prescriptive. Simply going on a woman's age alone is impossible because beyond the age of 34 years old, statistically donor eggs gives a woman a better chance of having a baby than her own eggs.

The woman would have to have no uterus, have a history of recurrent miscarriage or a history of very poor embryo development.

The man would have to be azoospermic or have very poor quality sperm.

71 Consultation Question 63:

Yes

Please provide your views below:

Please provide your views below:

Seems reasonable.

Yes

Please provide your views below:

72 Consultation Question 64:

Yes

Please provide your views below:

Please provide your views below:

I am conflicted on this one but I think the ASRM's limits of a combined age of 110 years is reasonable.

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 an allowance;

Please provide your views below:

I think their should be a "set fee".
This would make everything "above board" and intended parents and the surrogate know in advance what it's going to cost.

81 Consultation Question 73:

Please provide your views below:

A "set fee" obviates the need to itemise things because what is essential for one surrogate isn't necessarily essential for another.
"lost income" for a cleaner is different to "lost income" for a lawyer.

82 Consultation Question 74:

Please provide your views below:

As above, a "set fee" obviates the need to itemise things.
A "set fee" removes any ambiguity and the surrogate can't come back and say, "they promised they would give me £XXX for YYY".

83 Consultation Question 75:

Please provide your views below:

As above, a "set fee" obviates the need to itemise things.
A "set fee" removes any ambiguity and the surrogate can't come back and say, "they promised they would give me £XXX for YYY".

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:

As above, a "set fee" removes any ambiguity.
"lost income" for a cleaner is different to "lost income" for a lawyer.

85 Consultation Question 77:

Please provide your views below:

As above, a "set fee" is cleaner.

86 Consultation Question 78:

Please provide your views below:

As above, a "set fee" removes any ambiguity. If the surrogate is being paid, the DoE/Pensions (or whatever Govt. body is involved) would know what he surrogate is receiving and any social security entitlement would be adjusted accordingly. If that's not the case, there is scope for abuse.

87 Consultation Question 79:

Please provide your views below:

No. A “set fee” obviates the need to itemise things.
That said, there should be written into the agreement a fee the surrogate receives if the embryo transfer is unsuccessful (i.e. she doesn’t get the whole amount), and then a fee for each frozen embryo transfer thereafter up to the maximum amount when a baby is born and handed over.

Please provide your views below:

No.

a fixed fee set by the regulator (operating as a cap on the maximum payable), or

Please provide your views below:

As above, a “set fee” removes any ambiguity.

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 think it should be up to the surrogate to take out life insurance. I presume there are such policies available to surrogates and part of the “fee” should be used for that.
If the surrogate doesn’t take out such a policy and she dies, then that’s her lookout. Putting everything onto the intended parents is too much.

89 Consultation Question 81:

Please provide your views below:

no gifts.

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:

a fixed fee set by the regulator.

Please provide your views below:

no other payments;

Please provide any views below:

91 Consultation Question 83:

Please provide views below:

Yes, if the surrogate suffers a miscarriage then she gets paid less.
It should be a tiered structure:
1. embryo transfer results in a negative pregnancy test = £XX.
2. embryo transfer results in a positive pregnancy test but ends in an EARLY miscarriage = £(XX + YY).
3. embryo transfer results in a positive pregnancy test but ends in an LATE miscarriage = £(XX + YY + ZZ).
4. Stillbirth/early neonatal death = £(XX + YY + ZZ + AA).
5. Live birth, baby handed over = £(XX + YY + ZZ + AA + BB).
6. Baby kept by the surrogate = Zero paid.

some other period of time (please specify in the box below).

Please provide your views below:

It should be a tiered structure:
1. embryo transfer results in a negative pregnancy test = £XX.
2. embryo transfer results in a positive pregnancy test but ends in an EARLY miscarriage = £(XX + YY).
3. embryo transfer results in a positive pregnancy test but ends in an LATE miscarriage = £(XX + YY + ZZ).
4. Stillbirth/early neonatal death = £(XX + YY + ZZ + AA).
5. Live birth, baby handed over = £(XX + YY + ZZ + AA + BB).
6. Baby kept by the surrogate = Zero paid.

Overall, I think a set fee of £20,000 is reasonable and it is index-linked in some way (the annual increase to be determined by the regulator). This modest sum will more likely deter the “commercial” surrogate i.e. it will only attract potential surrogates that are doing it altruistically.
If surrogate’s want to take less (e.g. if it’s a cousin or some such), then that’s up to the surrogate.

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:

I don't think so.
I am of the view that a “set fee” removes any ambiguity.

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:

As above.

95 Consultation Question 87:

Please provide your views below:

Agreed.

96 Consultation Question 88:

Yes

Please provide your views below:

No

Please provide your views below:

If the baby is kept by the surrogate she should receive nothing.

Short Form Questionnaire: Law Commissions' Surrogacy Consultation



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? Surrogacy UK

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

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?
[redacted]

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	**Yes**
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	**It depends on the circumstances for the surrogate objecting.**
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**
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	**No, the parental responsibility should go to the Intended Parents as soon as the baby is born IF its their embryo and their DNA as it is genetically their child. However if the surrogate uses her own egg then the Intended Parents should have to apply for a parental order unless the surrogate objects**
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	**Yes**
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	**yes**
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**
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. Yes**
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	**Yes**
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 they shouldn't have had to give birth previously. Some surrogates don't want children of their own.**
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**
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. I don't think people should be matched though I think they should have access to profiles and be able to match themselves.**
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**
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	**Yes**
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**
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**
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**
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 they should.**
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	**All essential costs are any costs that the surrogate wouldn't have incurred if she had not chosen to be a surrogate. Including Maternity clothes, toiletries relating to pregnancy (breast pads and disposable underwear etc), loss of earnings, parking charges from hospital/clinics etc.**
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, There should be additional costs to help the surrogates family if required, for example a Recouperation Break after the birth to help the surrogate re bond with her family/children.**
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. Its unfair for the surrogate to have to be out of pocket for helping people become a family, all costs relating from getting to know each other until after the birth should be covered.**
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 they should.**
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 they should**
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	**As long as they don't profit from the Surrogacy I think they should be entitled to their benefits.**
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	**No I don't think the surrogate should be compensated but she shouldn't be left out of pocket either.**
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	**Life insurance should be paid for by the IPs in case of this.**
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, IPs should be able to buy gifts for the surrogate if they want to and vice versa. Costs shouldn't be limited as it is up to the IPs**
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 fixed fee should be made, it should just be expenses so the surrogate isn't left worse off and out of pocket**
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	**Costs of getting to know each other and the costs of trying to conceive**
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**
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	**I think more midwives and health staff should have more in depth training around surrogacy to help them understand and to ease the surrogate and the IPs**

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**.

Response ID ANON-2V7F-Y8U8-3

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 15:14:19

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:

British Pregnancy Advisory Service

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?

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:

Yes

Please provide your views below:

BPAS agrees with the proposed new pathway, which in our view - subject to a few alterations - constitutes a workable system that would sufficiently safeguard surrogates. In particular, we are supportive of the fact that surrogacy agreements would be unenforceable and the surrogate would retain a right to object - both of which would ensure her autonomy is preserved.

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?

No

Please provide your views below:

BPAS does not agree with the prohibition of anonymously donated gametes.

In practice this would preclude surrogates and intended parents from engaging with surrogacy organisations - and benefiting from their advice and guidance - in cases where anonymously donated sperm has been imported from abroad. It would also preclude surrogates and intended parents from engaging with surrogacy organisations in cases where sperm (from a donor within the UK) has been donated via an informal arrangement, e.g. where a sperm donor has been found online.

In both scenarios, it would be disproportionate to prevent the surrogate and intended parents from engaging with surrogacy organisations, restricting their access to advice. Such a preclusion would be in the best interests of neither the surrogate nor the intended parents.

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:

We do not believe that surrogates and intended parents in this situation should be precluded from entering the new pathway.

This would be out of step with the current law on the acquisition of parenthood in non-surrogacy situations, especially IVF. In cases where IVF is undertaken abroad using anonymously donated gametes, for example, the gestational mother and her partner obtain legal parenthood in the UK from birth. This is unaffected by their use of anonymously donated gametes. There is no reason, therefore, that intended parents should not be afforded the same status (i.e. legal parenthood from birth) in surrogacy cases where anonymously donated gametes have been used, providing that all other requirements for entering the new pathway have been met.

Surrogacy is a valid reproductive pathway and there is no justification for exceptionalising it in law by requiring intended parents to apply for a parental order because anonymously donated gametes have been used. Surrogates and intended parents who have used anonymously donated gametes should be permitted access to the new pathway.

18 Consultation Question 11:

No

Please provide your views below:

Regarding the objection period:
The objection period begins too late. The surrogate's right to object should come into force as soon as the agreement is made and should continue throughout the pregnancy, throughout labour, and for a fixed period after the birth. If the surrogate wishes to exit the agreement (and thus exit the new pathway) at any stage during the pregnancy, she should have the right to do so immediately, without having to wait until after the birth.

In cases where a surrogate changes her mind during pregnancy, it is unreasonable to compel her to remain in the agreement - and thus on the new pathway - for the remainder of her pregnancy and labour. This is a point of principle, but there are practical implications too. Under the current proposal, in this scenario the surrogate would need to wait until after the birth and then object, in writing, immediately in order to exit the new pathway as swiftly as possible. This would be highly impractical and could cause significant confusion post-birth, since the responsibility for decisions regarding the newborn's care may immediately be contested, placing midwives and obstetricians in an untenable position.

Regarding the requirement to make the objection in writing:
In cases where the surrogate changes her mind during labour, it is impractical to require her to make her objection in writing, and the subsequent confusion may cause significant difficulties regarding parental responsibility and decision-making regarding the child's care. Therefore, we propose that in these circumstances the surrogate should not be required to make her objection in writing. Instead she should be able to raise her objection verbally and follow up in writing within a defined period.

19 Consultation Question 12:

Yes

Please provide your views below:

The right to object is central to BPAS' support of the new pathway. In order for the surrogate's rights to be fully protected she must retain the right to exit the new pathway at any stage, and thus to become a legal parent from birth of the child she has gestated.

For the right to object to be meaningful, the surrogate upon exercising it must have the same rights as any other gestational mother, including legal parenthood from birth.

20 Consultation Question 13:

No

Please provide your views below:

Positive consent should be required in all instances, in order to safeguard the surrogate. There is a clear conflict of interest in asking intended parents to make the declaration since they themselves stand to benefit from the declaration being made. Moreover, in many cases it will be impossible for the intended parents to reliably assess the surrogate's capacity during the entire objection period (for example if they live in different cities).

21 Consultation Question 14:

No

Please provide your views below:

This would unnecessarily exceptionalise surrogacy in law. In all other scenarios, the gestational mother and her spouse acquire legal parenthood by default at birth. In cases where a surrogate has exercised her right to object, and thus opted to exit the new pathway, her legal status - and that of her spouse - should be no different from that of any other postnatal woman and her spouse.

When a surrogate raises her right to object, she opts to exit the surrogacy agreement, and the new pathway, altogether. In order for this objection to be meaningful, the surrogate and her partner should not have their right to legal parenthood withheld due to the fact that the surrogacy agreement (which has now been broken) once existed. In raising her right to object, the surrogate is bidding to retain legal parenthood, in which case there should be an option for her husband/partner to be a legal parent.

22 Consultation Question 15:

Not Answered

Please provide your views below:

Not Answered

Please share your views below:

23 Consultation Question 16:

Yes

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:

Upon the death of the surrogate, the surrogacy agreement should become void. In this case, the intended parents should be required to apply for a parental order, rather than automatically acquiring legal parenthood.

26 Consultation Question 19:

Yes

Please provide your views below:

BPAS supports this on the condition that the surrogate retains her right to object.

Please provide your views below:

1) Yes. In these circumstances it should be permissible for an application to be made for a parental order or an appointment as guardian. In both cases the surrogate's consent should be sought.

2) No. In the vast majority of cases this would reflect the wishes of neither the living surrogate nor the deceased intended parents.

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:

No

Please provide your views below:

BPAS does not object in theory to the automatic transfer of parental responsibility from the surrogate to the intended parents, since there are obvious practical benefits. However, it is essential that the surrogate has the right to object.

In all instances where the surrogate does not "by default" have the same rights as any other postnatal woman, she must retain the right to object. This includes both the automatic transfer of legal parenthood under the new pathway, and the automatic transfer of parental responsibility under the old pathway.

34 Consultation Question 27:

Other

Please provide your views below:

(1) Yes, subject to the surrogate's right to object.
(2) No. As per our answer to 26, BPAS believes that in all cases where the surrogate does not 'by default' have the same rights as any other postnatal woman she should retain a right to object. Moreover, in order for this right to object to be meaningful it must include the option for the surrogate to have parental responsibility.

Under the proposal set out here, it is conceivable that a surrogate could exercise her right to object but the child would remain under somebody else's care until the court hearing - which could be many months. This would in our view render the right to object meaningless.

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 surrogate should retain parental responsibility (shared with the intended parents) until the expiry of the objection period.

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:

BPAS supports the provisional proposals to create a regulated framework for surrogacy organisations in the same way that other assisted conception techniques are regulated. We believe that this type of regulation is preferable to including regulation in a legislative vehicle – enabling changes to be made alongside medical best practice and changing methods and approaches to creating families.

Yes

Please provide your views below:

We agree that surrogacy organisations should not be required to take a particular form – this is echoed in all other aspects of healthcare, and we would be reluctant to exceptionalise surrogacy by demanding, for instance, that surrogacy organisations would have to be charities.

Yes

Please provide your views below:

We agree with the appointment of a single person as the simplest way to enforce regulation. This is how other comparable medical care works - such as with clinic managers being the single responsible person for the CQC.

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?

Yes

Please provide your views below:

BPAS agree with the provisional proposal. We believe that intended parents and surrogates should be able to rely on a robust legal framework to protect their best interests – and allowing unregulated bodies to do so risks undermining the legal and regulatory protections provided to those involved in surrogacy arrangements. We also believe that an ability to operate outside the regulatory framework would risk undermining the intentions of revised

legislation – particularly those involving payments and international surrogacy arrangements.

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:

BPAS strongly agrees that surrogacy arrangements should remain unenforceable – and would wholly oppose any attempt to include in law any indication that a woman acting as a surrogate could have her behaviour, choices, and actions during pregnancy and labour constrained by a contractual agreement with a third party.

Furthermore, we believe that any provision of this nature would be in contravention of Articles 4 (Prohibition of slavery and forced labour), 8 (Right to respect for private and family life), and 14 (Prohibition of discrimination) of the European Convention on Human Rights, on the grounds that enforceability would deny a woman, for a period dating at least 9 months, an ability to make decisions about her own private life, and remove her ability to opt out of the contract (eg by terminating the pregnancy or by making a decision about parenthood) without being subject to civil proceedings.

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?

Not Answered

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:

BPAS do not agree with the provisional proposal, which exceptionalises surrogacy and undermines the rights of parents to decide whether or when to tell their children about their biological and gestational origins.

We also believe that this introduces a fundamentally new construct into law which has a significant potential to be damaging to all women - that gestational origin is something that is both essential to the identity of a person (as the inclusion on a birth certificate would indicate), and that its influence is such that it is *more important* to the identity of a person than their genetic origins. In the case of gestational surrogacy, this provision indicates that the law believes that a woman who has carried a pregnancy for 9 months but who has no genetic relationship to the resulting child has such an impact on that child's life that the fact the child was not carried by their genetic parent should be notified on their publicly-available birth certificate. Although this interpretation of gestational determinism may be understandably relevant to surrogacy - the Commission should not overlook the serious impact this will have on other areas of law and policy, including those that determine women's actions during pregnancy and the impact on her child. Recognising gestation as a distinct, notifiable, aspect of personhood carries with it the dangerous implication that women could have obligations to behave in certain ways whilst pregnant. This is something we wholly oppose.

There is currently no provision on birth certificates for notation of donor conception, and we believe that this is the appropriate comparison. There can be no justification for treating a child born of a surrogacy arrangement any differently to a child whose genetic background is not related to either one or both of their legal parents.

We believe that the apparent differentiation between 'full form' and other forms of birth certificate is also outdated, given that for the purposes of proving identity for births after 1st January 1983, the full birth certificate is necessary. This means that if you are asked to prove your identity, for instance by an employer checking your right to work, or by the NHS checking eligibility to receive free care, your use of your birth certificate will require the disclosure of surrogacy information.

Further, under the Births and Deaths Registration Act 1953, 'any person shall be entitled to search the said indexes at any time when the General Register Office is open for that purpose, and to have a certified copy of any entry in the said certified copies'. What that means, in short, is that any person who knows the rough date of birth and name of one of the intended parents would be able to obtain a birth certificate disclosing that their child was born as a result of a surrogacy arrangement.

In our view there is simply no justification for information about surrogacy being included 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:

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:

No

Please provide your views below:

In line with our response to q44, we believe enshrining gestation as a separate concept in law has the potential to have negative impacts on all women. We would therefore suggest removing 'born to, and' from this statement. Genetic relations involving regulated activities are already able to trace information, and there is no requirement in this circumstance to go beyond what is already in law.

Please provide your views below:

We do not believe that gestational links that do not include genetics should be available for searching on the register.

60 Consultation Question 52:

Please provide your views below:

Please provide your views below:

BPAS does not believe that children who are genetically unrelated to surrogate-born children should be able to use the register to identify each other. The decision to act as a gestational surrogate belongs to the woman involved, and not to other people in her life who have no genetic link to her surrogate pregnancy. We also find it curious that 52(2) is a separate question from the second part of 51, when the ultimate relationship of the children involved is the same. There is no reason that the 'surrogate's own child' should be entitled to information which a surrogate-born child is not. And our opinion is that no information should be available about other children to whom there is no genetic link.

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:

Yes

Please provide your views below:

BPAS believes that the current interpretation of the legal requirement for consent, with the exceptions provided is an appropriate. We believe it is important to ensure that these exceptions continue to be narrowly drawn and cannot be used as a way particularly to avoid the provision of consent in international surrogacy arrangements.

No

Please provide your views below:

BPAS does not believe that these additional provisions for dispensing with the consent of the surrogate adequately protect the legal position of a surrogate mother – particularly one who may have exercised her right to object. In order to retain a surrogate's rights, there has to be a meaningful right to object - and increasing the ease with which a surrogate's consent can be dispensed with, in our view, unduly shifts the balance of power away from the surrogate.
a) There is a fundamental difference between living arrangements and legal parenthood, and consent to one does not necessarily entail consent to the other. The concession of living arrangements should not – in and of itself – constitute a grounds for dispensing of consent to a parental order.
b) Similarly, the determination of a court as to living arrangements should not entail an easier path to the removal of the surrogate's legal parental rights. The issues considered and decided upon are different, and the impact of the latter has a much greater impact on the surrogate's legal status. She should be entitled to have her case specifically on parental rights heard in a dedicated court hearing.

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:

No

Please provide views below:

BPAS do not agree that double donation should only be permitted in the event of infertility. The provision for any form of double donation indicates that intended parents' genetic relationship to a surrogate child is not necessary. There is, therefore, no reasonable cause to restrict this provision to those who have absolutely no other choice – and it is unclear what mischief this provision is directed at preventing.

We recognise that families can be created in many different ways, and that genetic and/or gestational links are not a necessary prerequisite to becoming a parent or building a family.

Once again, this provision would exceptionalise surrogacy. Double donation for IVF is a recognised practice available to women who are able to carry the pregnancy themselves, without legal medical restrictions on which women are eligible for this treatment option. Women who are unable to carry the pregnancy themselves would therefore be placed at a disadvantage – with the potential outcome that the intended parent or parents may be unable to have a child.

We also believe that the framing of this proposal places a significant burden of proof on individuals with regards to infertility. For instance - if a woman is unable to conceive owing to PCOS, but her doctor includes in the diagnosis that her symptoms may be lessened if she lost weight, would that count as infertility? We believe that looking at the conditions attached to NHS funding for IVF, it is clear that a requirement for infertility will mean that many parents who are functionally unable to provide gametes that result in a healthy pregnancy will be precluded from using double donation.

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:

(2) BPAS do not believe that intended parents should have to provide gametes and therefore disagree with this provision. We also believe that the requirement of medical or DNA evidence would once again serve to exceptionalise surrogacy.

Not Answered

Please provide your views below:

72 Consultation Question 64:

Yes

Please provide your views below:

BPAS agree that there should be no maximum age limit for the grant of a parental order. However, we believe that if the age of intended parents is taken into account in applications to grant a parental order, this information (and guidance) should be available from regulated surrogacy organisations so that intended parents can make informed decisions.

We do question, however, whether there is, in practice, any age at which the court would decline to grant a parental order – given that the alternative would leave the child without legal parents who have parental responsibility. As with the current provision on expenses, this provision is liable for misuse because it indicates a boundary where, in practice, none will exist.

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:

No

Please provide your views below:

BPAS would question what 'medical testing' is concerned with in this question. The medical testing/screening in the Code of Practice is based both on guidelines and on s13(9) of the Human Fertilisation and Embryology Act 1990.

We do not believe it is appropriate to include in legislation the requirement for medical testing or for a legal requirement (as per the HFEA 1990) to opt for embryos without an abnormality over those with an abnormality.

Regulation is a more appropriate place to situate requirements medical testing as this will be based on current best medical practice.

Please provide your views below:

75 Consultation Question 67:

No

Please provide your views below:

BPAS strongly disagrees with this proposal. As abortion providers, we are deeply concerned by any proposal that predicates access to reproductive health and rights on the take-up of counselling. This type of proposal has a long and negative history with denying women's ability to make their own reproductive decisions – particularly those that may not fit with society's expectations of women's choices.

Nowhere in law is there currently a requirement for individuals to attend counselling prior to entering into medical treatment or a legal contract. The most obvious comparison is, once again, IVF. The HFEA 1990 says that counselling for assisted conception 'must be offered' (Schedule 3ZA, Part 2) but does not place an obligation on the patient to take it up. S13 of the HFEA 1990 requires that patients have "been given a suitable opportunity to receive proper counselling". Similarly, the HFEA Code of Practice provides for 'counselling to be offered' (Interpretation of mandatory requirements 3A). None of these require a woman 'to attend counselling' prior to exercising her reproductive rights.

Similarly, for abortion care, although the provision of counselling pre- and post-abortion is required under the Required Standard Operating Procedures

from the Department of Health, no woman is required to take it up. It is also not mentioned anywhere in legislation.

We therefore suggest that provision of counselling is included in regulation and not legislation, and that take-up of counselling is not required.

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:

BPAS do not believe that there should be a requirement to have previously given birth. This decision is rightly one for the surrogate and not one that it is reasonable to impose at either a legislative or regulatory level. Information should be provided to all potential surrogates to ensure that they fully understand the risks of pregnancy and birth, regardless of whether they have previously given 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?

Yes

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

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:

[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

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 f 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

Paragraph 18.22

Response ID ANON-2V7F-Y8JC-3

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 15:34:22

About you

1 What is your name?

Name:
Charlotte Russell

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:

Yes. There is a history of International surrogacy abuse 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:

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:

No. 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.

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.

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:

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:

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:

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

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.

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

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 f 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

Paragraph 18.22

Response ID ANON-2V7F-Y8JM-D

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 15:41:53

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:

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:

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:

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:

No

Please provide your views below:

19 Consultation Question 12:

Not Answered

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:

Yes

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:

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:

The surrogate ie the party not caring for the child should have restricted parental responsibility

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:

No

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, age 50.

Yes

Please provide your views below:

73 Consultation Question 65:

Yes

Please provide your views below:

Yes

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.

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

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 absolutely 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 absolutely 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 and low paid women to engage in surrogacy when it is not in their best interests.

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

Paragraph 18.22

Response ID ANON-2V7F-Y8YS-2

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 15:50:09

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:

member of 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:

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:

When appropriate safe guards are in place as described above, I think this is a pragmatic and sensible choice for the IPs to be legal parents at birth.

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?

No

Please provide your views below:

I disagree. If the gametes have been obtained through proper channel - anonymously donated through a clinic where screening has taken place and records are kept, then this should not be a barrier to 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:

I disagree. If the sperm has been obtained through proper channel - anonymously donated through a clinic where screening has taken place and records are kept, then this should not be a barrier to surrogacy.

18 Consultation Question 11:

No

Please provide your views below:

My experience has been that surrogates do not want legal responsibility for a child who is not theirs. The time for this objection is prior to the agreement being in place and embarking on the surrogacy journey.

19 Consultation Question 12:

No

Please provide your views below:

The surrogate should not be able to object to the intended parents acquiring legal parenthood, other than in absolute extreme cases where she has tangible evidence that the safety of the child is at risk.

20 Consultation Question 13:

Other

Please provide your views below:

I don't agree that there should be an option for the surrogate to object however, if that is ultimately what the commission proceeds with, then this proposal around declarations would be an appropriate safe guard.

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:

My experience has been that surrogate spouses do not want to be legal parents to a child who is not theirs.

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 think this is something that should be included in the agreement, with the surrogate giving clear guidance on what they want to happen in this situation.

26 Consultation Question 19:

Yes

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:

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:

Please provide your views below:

40 Consultation Question 33:

Yes

Please provide your views below:

we have found Surrogacy UK to be such an amazing resource both in terms of actual validated information and facts but also the community support around you as you embark on this process.

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:

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:

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 think charging for these elements begins to create a market place where suppliers are selling a solution. This would lead to competition and dubious practices as varies organizations compete to earn the most money through fees. If there is to be fees charged, they should be standardized by the HEFA

to prevent this from happening.

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:

As someone who works in advertising, the moment you open up to allow advertising for surrogacy, you start on the path towards commercializing surrogacy, which would ultimately be detrimental to all involved.

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:

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:

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:

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?

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:

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:

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, and only on production of receipts.

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:

IPs should be able to pay for lost earnings. The surrogate should not be out of pocket in any way for helping the IPs

85 Consultation Question 77:

Please provide your views below:

IPs should be able to pay for lost earnings. The surrogate should not be out of pocket in any way for helping the IPs

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 think the payment of life insurance is an appropriate step to take in surrogacy arrangements.

89 Consultation Question 81:

Please provide your views below:

I think there should be a clear definition of what constitutes a gift and a clear threshold of what it can cost. Similar to how gifting works at major corporations, where there is a monetary threshold and a clear list of appropriate items.

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:

Having lived [redacted] I worry about the commercial aspect of surrogacy. It should not become a "pay to play" arena where surrogates are competing to make the most profit. Plus once the exchange of payments happens this risks becoming a "suppler" and "client" relationship rather than one based on trust and friendship. Surrogates should be able to maintain autonomy of their own bodies and not have to answer to someone who has paid them for a service and has their own expectations of what she should do.

a fixed fee set by the regulator.

Please provide your views below:

I don't think any payment should be allowed. However if the final decision is to allow pay for play in surrogate then a fixed fee is critical to prevent it becoming a supply./demand marketplace.

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:

Short Form Questionnaire: Law Commissions' Surrogacy Consultation



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? Anscombe Bioethics Centre

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

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

What is your email address?
[redacted]

What is your telephone number?
[redacted]

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	**No. The surrogate is the (or a) biological mother of the child: as with all biological parenthood, this is an objective fact in respect of which the parent's feelings and intentions may change. During the pregnancy the surrogate has been offering genuinely maternal care, and she has rights and responsibilities as the birth mother which the law should reflect. Pregnancy makes one already a mother and the law should reflect this in the default position regarding legal parenthood. In contrast, an intended parent who is not genetically related to the child is not yet a parent, even if he/she may become a social parent in due course. Like any other birth mother,**

	regardless of her plans during the pregnancy, the surrogate needs sufficient time after the birth to decide whether she does indeed want to relinquish the child, or whether she has other plans for the child for whose welfare she is responsible in the first instance. The expectation of detachment from the child she has been carrying, on which surrogacy is premised, is not a reasonable expectation and should not be legally or socially endorsed. There are important human values here to protect, bearing in mind that there are other practices disrespectful of women that women themselves can accept and internalise. It is in everyone's interests that pregnancy should be seen by those entering into it as a fully committed, fully parental relationship, not as 'just another job'.
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. To place the burden on the surrogate to object, especially in such a short time-frame, is unreasonable and unjust. She is the birth mother, and like any other birth mother (including those who intended earlier to relinquish the child for adoption) she should normally be required to take positive action to relinquish the child after a reasonable length of time has elapsed. This is especially the case as processing her feelings following the birth (which may have been physically demanding and traumatic) may not be the work of a few days or even a few weeks. The surrogate may also be confused about the right process for objecting even if she has received advice on this point: must she lose or risk losing legal parenthood forever simply by not objecting in the right form or going slightly over time? (We note in contrast the proposal that there be no time limit for those intended parents who would still need to apply for legal parenthood.) Even where a surrogate will not be raising the child herself, but wants an ongoing relationship with the child, we believe it may be appropriate in some cases for a court to accord some contact rights to the surrogate, as with any biological parent – though the fact that she is not just a biological parent but the birth mother (i.e. the parent who has cared for the child prenatally for many months) means that she should be given a generous amount of time to consider whether she wishes to raise the child herself.**
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	**Yes, although in that case the onus would be on the intended parents to show that the surrogate is an unfit parent. While the rights of the genetic intended parent should also be respected as in the case of any genetic parent not married to the birth mother, pre-birth plans for the child should not dictate post-birth care of the child, any more than with any other pregnancy situation.**
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. We believe the surrogate's spouse should continue to be a legal parent of the child born as a result of the arrangement, not least because the spouse will be co-parenting, should the surrogate wish to keep the child and be permitted to do so.**
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	**No. The surrogate mother should retain parental responsibility until such time as she cedes it by a positive act or until such time as she has been shown to be unfit to raise the child. The risk is otherwise that even a surrogate who immediately regrets having relinquished the child will be seriously disadvantaged by even a temporary legal assumption that the child will be cared for by the intended parents.**
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. We agree that she should retain parental responsibility (although we disagree concerning her need to take positive action to object under the new pathway and the very short time frame allowed to her to do so).**
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	**The model here should be other cases where the biological parents of a child do not live together. The surrogate should be allowed at least the degree of parental responsibility normally accorded a residential or non-residential birth mother respectively.**
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	**No. Our concern is that where, due perhaps to some immediate health problem, the surrogate allows the child to live with the intended parents only temporarily or where a court has determined that the child should live with the intended parents as a temporary measure the surrogate would too easily lose the right to raise the child as a later court will then wish to endorse the status quo.**
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	**No. We believe the new pathway offers insufficient protections to surrogates generally who may wish to change their mind if they are given sufficient time to do so, and we particularly object to reducing protection in this area for traditional surrogates. While any gestational mother is a biological mother, whether or not she has a genetic relationship to the child, the psychological implications of relinquishment for both the birth mother and the child may be greater where there is both a genetic and a gestational relationship.**
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	**No - we believe that the new pathway offers insufficient protections to surrogates and this would also apply to independent surrogacy arrangements being brought within its scope.**
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 insofar as it constitutes legal and/or personal preparation for surrogacy poses problems in principle, nor can it rectify the fundamental imbalance in surrogacy arrangements and the lack of respect they show for the bonds created by bearing a child. Nevertheless, we believe that any surrogate who has not received implications counselling should be particularly sympathetically considered should she wish to keep the child.**
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	**Click or tap here to enter text.** **The new pathway offers insufficient protections to surrogates, and preparations for**

to Q12	**surrogacy pose problems in principle and will not rectify the fundamental imbalance in surrogacy arrangements and the lack of respect they show for the bonds created by bearing a child. Nevertheless, we believe that any surrogate who has not taken independent legal advice should be particularly sympathetically considered should she wish to keep the child.**
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	**We agree that all (but only) those financial terms which involve the meeting of post-conception medical expenses for the surrogate in relation to continuing the pregnancy, birth or miscarriage or compensation for the surrogate's injury or death should be enforceable. We agree these should not depend on the surrogate complying with any terms of the agreement relating to her lifestyle.**
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. This would create a further demeaning of and commercialisation of pregnancy, and encourage more women, particularly those in financially difficult circumstances, to engage in it.**
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	**We are opposed to surrogacy in principle, as an objectification of pregnancy and of the pregnant woman; however we would support the prohibition of at least elective surrogacy on the part of those physically able to carry a child. While we accept that some women find pregnancy psychologically very difficult, we are also aware that such difficulties can sometimes be surmounted so that a positive experience of pregnancy and childbirth then ensues. In no case do we believe that the fragmentation of motherhood and coopting of the body of another woman to gestate the child is a humane or respectful solution. Allowing elective surrogacy increases the risk that such arrangements could become widespread in the future, reinforcing**

	social inequality, and promoting a general view on which pregnancy is seen as merely a job to delegate, not a profound and maternity-creating bond.
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	**Those who have not previously given birth should be excluded from the new pathway. Women in this situation are less likely to be aware of the possible impact on them of pregnancy, childbirth and relinquishment. The potential for regret is also clearly increased should the woman subsequently be unable to conceive, gestate and raise a child – perhaps even due to birth complications with her surrogate pregnancy.**
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	**We do not agree that there should be regulated surrogacy organisations as the law should not support or encourage the establishment of such organisations, but we do believe that at least some ways of facilitating surrogacy (e.g. commercially or internationally) should be against the law.**
Q18	Consultation Question 35. We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?
Your Response to Q18	**We do not agree that there should be regulated surrogacy organisations as the law should not support or encourage the establishment of such organisations, but we do believe that at least some ways of facilitating surrogacy (e.g. commercially or internationally) should be against the law.**
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	**We are not opposed to legal discouragement of particular surrogacy arrangements which are especially problematic, such as commercial surrogacy or international surrogacy arrangements. Nor are we opposed to giving instructions once a surrogate**

to Q19	**pregnancy is already underway on how best to protect the surrogate and the child. However, we are opposed to issuing positive requirements for surrogacy preparations, and more generally, any requirements aimed at a securing the child's quicker transfer to the intended parents. We also note that a regulator can easily become too close to the organisations it regulates so as to become an advocacy group for the sector, and believe this has indeed happened with the HFEA, which it is proposed should be the regulator for surrogacy.**
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	**No. Double donation deprives the child, in a pre-planned way, of the care of all biological parents (the gamete providers and the surrogate) and should be prohibited in all surrogacy arrangements. If this requirement is lifted for national arrangements, it should at least be retained for international arrangements; however, it should be retained in both.**
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. All available information should be recorded, including identifying information on gamete donors. Surrogacy should not be registered where anonymous donors have been used as this will encourage those who wish to evade UK requirements on this issue to make surrogacy arrangements overseas. A parental order is not a sine qua non for raising a child, and to protect the interests of children in general, such as their interest in knowing their genetic parents, parental orders will sometimes need to be withheld.**
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	**Yes, although identifying information should also be available to adult surrogate-born individuals. There is much to learn here from the experience of adoptees and donor-conceived people of the significance of knowing one's biological origins, including the person who gave birth to one. This is an important fact about a person's history and part of their full understanding of themselves.**
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	**We believe that children should be able to access the register where their legal parents have consented or where a counsellor judges that they are sufficiently mature to receive this information.**
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 in both cases. Important as genetic connections are, gestational connections have their own significance as a form of family relationship; moreover, gestational siblings will sometimes be the only contact the surrogate-born person has with the birth family. There is also the concern of those who fear that they may unknowingly form a marital or other sexual relationship with a genetic and/or gestational sibling if such siblings are impossible to identify.**
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	**We believe that in each case, the siblings should be able to identify each other if both so wish. We note that in the case of donor-conceived people, it has proved to be very significant for some to be able to contact their (half-) siblings, including the social children of the donor. Gestation is another form of biological connection that creates a genuine sibling relationship. There is also the concern of those who fear that they may unknowingly form a marital or other sexual relationship with a genetic and/or gestational sibling if such siblings are impossible to identify.**
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	**We do not believe that such an intended parent should be registered: an intended parent is not the same as a parent, and the former partner of someone who goes on to make an application for a parental order has at no time parented the child.**
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	**Only receipted medical and related (e.g. travel) costs incurred subsequent to conception/embryo transfer in connection with continuing the pregnancy, miscarriage, birth or post-birth costs should be paid.**
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	**We do not support payment of costs prior to pregnancy as this amounts to payment to become a biological mother or at least, a subsidy to become a biological mother on behalf of other people. Nor should a woman who has been paid to become a biological mother in this way be paid to remain so, any more than any parent should be paid for providing basic care for what has become her own child. Paying a woman to gestate a child is no more appropriate than paying a woman for sexual services: in both cases, what should be a highly special and exclusive activity is commodified as if it were 'work' like any other. Only medical and related (e.g. travel) costs directed at sustaining an established pregnancy, delivering the baby or in connection with miscarriage or birth injuries should be paid.**
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	**Only medical and related (e.g. travel) costs directed at sustaining an established pregnancy, delivering the baby or in connection with miscarriage or birth injuries should be paid.**
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	**Only medical and related (e.g. travel) costs directed at sustaining an established pregnancy, delivering the baby or in connection with miscarriage or birth injuries should be paid.**
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	**No, we do not believe that surrogates should be paid, and we regard payment for lost earnings as a form of payment for gestation (in contrast, we believe that medical costs in regard to established pregnancy, delivery and post-pregnancy care should be reimbursed).**
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	**No, we do not believe that surrogates should be paid in either case, as both effectively amount to a form of payment for gestation.**
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	**Medical expenses should not have an effect on means tested benefits, and payments over and above medical expenses should not be legal.**
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	**We do not support payment of expenses prior to pregnancy (2) as this amounts to a payment or subsidy to become a biological mother on others' behalf. Nor should a woman who has become a biological mother in this way be paid to remain so (1) any more than any parent should be paid for providing basic care (albeit sometimes burdensome care) for what has become her own child. While we support reimbursement of genuine medical expenses subsequent to conception, including expenses connected with miscarriage, with a generous cap on the maximum payable, we strongly oppose the payment of expenses for a termination of pregnancy, such as where the baby has a medical condition. Although we consider abortion in this (and other) cases a serious harm to the woman herself, as well as to the baby, abortion for that very reason should not be reimbursed, as a harmful, non-therapeutic and elective procedure. To treat abortion as reimbursable, e.g. in the case of foetal anomaly where the intended parents may request that the surrogate abort, promotes a consumerist attitude to children according to which they are not accepted unconditionally, but only if they meet certain requirements. The promise in advance to pay abortion-related expenses could also be regarded as pressure to terminate on the part of the intending parents, who are likely to take the initiative here.**
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	**While subsequent to the surrogate's death or injury, it should be possible for intended parents to pay compensation which is morally owed to her/her family, promises or arrangements in advance to do this (via e.g. life assurance) are not the route to compensation we would support as these consitute preparation for the surrogacy itself.**
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	**No. Intended parents should not be able to buy gifts for the surrogate, not least as this may create emotional pressure to relinquish the child. It may also be seen by both the surrogate and the parents as a form of payment 'in kind' (this applies particularly to expensive presents but also to presents more generally).**
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 payments should be made except reimbursement of medical and related costs in connection with continuing (as opposed to starting or terminating) the pregnancy, and medical costs in connection with birth or miscarriage, together with compensation for death of or injury to the surrogate. While subsequent to the surrogate's death or injury, it should be possible for intended parents to pay**

	compensation which is morally owed to her/her family, promises or arrangements in advance to do this (via e.g. life assurance) are not the route to compensation we would support as these consitute preparation for the surrogacy itself.
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	**No. Only medical and related (e.g. travel) costs directed at sustaining an established pregnancy, delivering the baby or in connection with miscarriage or birth injuries should be paid.**
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	**No. Only medical and related (e.g. travel) costs directed at sustaining an established pregnancy, delivering the baby or in connection with miscarriage or birth injuries should be paid.**
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	**No. International surrogacy should not be streamlined, not least as the international surrogate is likely to be in a weaker legal and social position than a surrogate in Britain. Moreover, if the child is taken from another country, it will be much harder for the child to seek his or her birth mother or connect with the place and culture of his/her natal land. It should not be assumed that the child will be indifferent to these things, or that the surrogate will not wish herself to have some long-term contact with the child. If international surrogacy is effectively encouraged, there may be other e.g. legal problems, despite efforts to address these.**
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	**We do not agree that the process for international surrogacy should be streamlined, not least as the surrogate is likely to be in a weaker position than a surrogate in Britain should she wish to change her mind (and there may be other issues of exploitation such as non-payment of medical expenses). We therefore oppose advance application for a visa, and the bringing of visas within Immigration Rules. If a visa is granted, however, this should not include any requirement for a breaking of links with the surrogate, or any prevention of the child having an on-going relationship with the surrogate (though in practice, such a relationship may be unlikely, not least as the child and the surrogate may not even have a common language).**
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	**No. It is no more appropriate to streamline international surrogacy than surrogacy within Britain (in fact, it is less so as the international surrogate is likely to be in a weaker social and legal position).**
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	**We agree providing the guide is purely factual, and does not advise intended parents how to prepare for surrogacy, or refer to surrogacy organisations providing such advice.**
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	**No. This amounts to streamlining of international surrgoacy. The intended parents should be required to apply for a parental order. It is not in principle possible to prevent the exploitation of surrogates where surrogacy is legally permitted. Even where some protective legal measures exist, the Secretary of State may not be well placed to ascertain what the practice is like on the ground in the country in question. Moreover, the welfare of both surrogate and child is in any case further endangered in international surrogacy by the fact that it will be more difficult to identify and contact the surrogate should the adult born of surrogacy wish to do so.**
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	**While we welcome the fact that there is some attention to the rights of the surrogate in the Department guidance, and the stress on the fact that (at present) the surrogate is the legal mother of the baby at birth, we would like to see more stress on protection of the surrogate from any pressure to relinquish the baby and any expectation that she refrain from holding and spending time with the baby, whatever her contract may say to the contrary. We would also urge that the practice of recording in the hospital records the name of the woman who gives birth – the only patient involved – should be followed in every case (we would not, however, object to adding the names of the intended parents, not least as this may be helpful in identifying the child).**

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**.

Response ID ANON-2V7F-Y8TA-B

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 16:02:16

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:

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:

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:

I think the surrogate's right to object should not exist in cases of gestational surrogacy.

15 Consultation Question 8:

Yes

Please provide your views below:

100 years; or

Please provide your views below:

100 years would cover the lifetime of most children born of surrogacy. But it will impose a burden on regulated surrogacy organisations. What would happen if an organisation ceased to exist?

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:

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 prevention would discriminate against single female IP's

18 Consultation Question 11:

Other

Please provide your views below:

I think the surrogate's right to object should only exist for traditional surrogacy. In gestational surrogacy, where the surrogate is not "related" to the embryo, there should be no right to object.

19 Consultation Question 12:

Other

Please provide your views below:

Ditto Question11. I think the surrogate's right to object should only exist for traditional surrogacy, whether in the new or old pathway.

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:

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:

It seems the most straightforward way, with less stress all round.

34 Consultation Question 27:

Yes

Please provide your views below:

Proviso: There should be no right to object in the case of gestational surrogacy.

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:

Proviso: There should be no right to object in the case of gestational surrogacy.

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:

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:

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:

I agree there should be a regulator, but I think it should be with a clean slate and a fresh approach. The HFEA has too much history behind it, and I can see a danger of getting bogged down in existing bureaucratic procedures, or ones modelled on the HFEA approach.

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?

Other

Please provide your views below:

On the whole I agree. But I believe some thought needs to be given to the area of gestational surrogacy and enforcement. Given the length and nature of the journey to surrogacy, IP's should have have something to fall back on. Perhaps some form of judicial review in any particular case of disagreement.

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 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, I agree. Having such a hard and fast limit seems inflexible. It seems unreasonable to turn things into a schedule.

63 Consultation Question 55:

Yes

Please provide your views below:

It is reasonable and has worked so far.

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:

It seems the best way to avoid exploitation driven internationally.

Please provide your views below:

There needs to be the idea of a home for the child to grow up in. I take it this is what is implied by "habitual residence". The problem I see for a qualifying period is that some families move. This may be for work reasons, for instance, or even in anticipation of an increase in family size.

65 Consultation Question 57:

Please provide your views below:

Defining such qualifying categories in the modern world is a bit like tempting fate. Point (2) seems the appropriate way.

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:

Absolutely. The idea behind surrogacy is to create a family.

67 Consultation Question 59:

Yes

Please provide views below:

I wholeheartedly agree with point (1). The problem I foresee with point (2) is the criterion of medical necessity. The journey to surrogacy for most IP's is a lengthy, stressful and often expensive process (with multiple failed cycles of IVF). Putting the onus on proving medical necessity is yet another round of stress and almost certainly expense.

And what of "medical necessity"? What if the only fertile IP has an inheritable disease? Would that constitute medical necessity? Most IP's on the journey to surrogacy are mature, not only in age but in sensibility. We're capable of making informed decisions without trying to preempt the situation with difficult laws. Whatever definition of "medical necessity" you come up with, I'm certain it will be challenged at some point in a court of law.

Please provide views below:

Double donation should be permitted under both the parental order pathway and the new pathway, without any differentiation. I am not sure how a difference could be justified. It seems inherently unreasonable for a pathway to be preferred/discouraged (lawful/unlawful?) depending upon a person's physical makeup.

No

Please provide views below:

On first thoughts the proposal seems eminently reasonable. But what if double donation is required? Does this then preclude the sourcing of gametes internationally. So I suppose it depends upon what is meant by "international surrogacy arrangements". What if: the gametes are doubly donated (maybe from overseas) but the surrogate and IP's are British and reside in the UK? I suggest we mandate certain countries as being permissable for double donation; eg: Canada.

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?

Other

Please provide your views below:

Double donation should be permitted under both the parental order pathway and the new pathway, without differentiation. The above Consultation Question 60, I would believe, is the sort of convoluted law that would result otherwise. Read it again!

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?

Other

Please provide views below:

This is a case in point regarding the issue of medical necessity. If the criterion wasn't there, this "exception" would not be required

70 Consultation Question 62:

Please provide your views below:

First of all, I don't think it wise for there to be a distinction at all, vis-a-vis medical necessity, between the new pathway and the parental order pathway. It would make for bad law.

Secondly, if you accept that, then in my opinion the idea falls! Why? Because refusing a parental order on the grounds of failure to prove medical necessity would be cruel, especially when surrogate and IP's were singing from the same sheet.

Please provide your views below:

I think the idea of medical necessity is flawed. As the consultation document states, we don't have much of a problem (if any) in the UK regarding abuse of surrogacy by IP's. For goodness sake, the journey is difficult enough as it is! I think the law best left as it is, and we reform as and when abuse arises.

What would "a" test consist of? Certainly not a single medical procedure. That would be naive. From my earlier comment: What if the only fertile IP had an inheritable disease? Would that constitute medical necessity? Whatever definition of "medical necessity" you come up with, I'm certain it will be challenged at some point in a court of law.

71 Consultation Question 63:

Yes

Please provide your views below:

Please provide your views below:

Agree with point (1); ie: those who contributed gametes are entered on the national register of surrogacy agreements.

I don't agree with point (2) because :
(a) It excludes double donation.
(b) It would simply increase stress and expense. And
(c) What if the condition were not met? It would seem to me to be cruel in the extreme, and damaging to all parties.

Yes

Please provide your views below:

72 Consultation Question 64:

Yes

Please provide your views below:

Very sensible. Proviso: I'm not sure what you're trying to imply in the second sentence is valid. It's not the age of the IP's but their suitability; eg: that they don't have any terminal or debilitating illness. Given our ageing population, we should not discriminate on the basis of age.

Please provide your views below:

Under the new pathway (as well as the parental order pathway!) there should not be a maximum age limit for intended parents. The journey is difficult enough as it is. Most (actually I would say 'all') surrogates make very serious informed decisions regarding IP's. At one SUK conference that I attended, where a social scientist from Cambridge gave a presentation, the conclusive idea given by the scientist was summarised as (and I think this is word perfect): "Surrogates look for a strong relationship, and make it stronger".

Yes

Please provide your views below:

73 Consultation Question 65:

Yes

Please provide your views below:

I would place the age somewhat higher, at say 21. Sometimes maturity in these things is highly desirable. Would you mandate a sixth-former as a surrogate? Might give schools a problem.

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:

Other

Please provide your views below:

It seems a sensible requirement. But it is yet another hurdle, and maybe more expense. SUK are very good at vetting membership, whether of IP's or surrogates.

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:

Ditto for 75 above.

It seems a sensible requirement. But it is yet another hurdle, and maybe more expense. SUK are very good at providing support.

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:

I would argue against this, on the grounds of experience. I have known a surrogate who has had multiple surrogacy births, but has no children of her own. So I think this would be too restrictive.

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:

My background position regarding payment is that surrogacy should be altruistic.

Surrogacy is very, very dependent on a relationship of trust between IP's and surrogates.

81 Consultation Question 73:

Please provide your views below:

Payment of essential costs comes within the bounds of altruism, so "Yes". I would suggest essential would be related to pregnancy or allied expenses; eg: child care whilst the surrogate attends antenatal clinic.

82 Consultation Question 74:

Please provide your views below:

Again the answer is "Yes". It seems sensible, for example, to pay for things related to social activities involving IP's and surrogates.

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:

I think this steps out of the bounds of altruism, so the answer is "No".

85 Consultation Question 77:

Please provide your views below:

86 Consultation Question 78:

Please provide your views below:

87 Consultation Question 79:

medical treatments relating to the surrogacy, including payments for each insemination or embryo transfer; and/or

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:

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:

The idea of a life assurance policy is sensible. I cannot see an objection to IP's funding this. Anything else is too open-ended and would act as a restriction.

89 Consultation Question 81:

Please provide your views below:

Given the necessity of trust and friendship, gifts would seem appropriate. But they should be modest and reasonable in nature. There should be specific provision for this.

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 should be altruistic. If we step outside this, we could open a Pandora's box of problems.

Not Answered

Please provide your views below:

I disagree in principle with payment that is not altruistic.

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:

Surrogacy should be basically altruistic. That is it's main safeguard. I think that is covered so long as there is a regime of allowed expenses.

95 Consultation Question 87:

Please provide your views below:

96 Consultation Question 88:

Yes

Please provide your views below:

Provided the basic understanding is altruism.

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?

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:

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 provude 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:

This discriminates against those who must rely upon double donation. It is particularly likely to cause distress to single IP's

Please provide your views below:

In both situations, why impose yet another hurdle (and expense?) on an already stressful journey? I can see it causing mental and financial problems. In fact, it may cause mental anguish for those who have and those who have not an acceptable "medical necessity".

Also the definition of medical necessity will cause problems. For example, infertility will not cover people who suffer from some form of inheritable disease.

122 Consultation Question 114:

Please provide your views below:

123 Consultation Question 115:

Please provide your views below:

(1) Allowing double donation will increase accessibility, since by its very nature it allows a greater number of people to become IP's.

(2) Despite the above, I feel the aspect of medical necessity, if it is interpreted as being infertility, will impose an unnecessary restriction (eg: for those who are fertile but have an inheritable or potentially inheritable disease). We don't have much of a problem (if any) in the UK, so i suspect even a broader definition of medical necessity will be unduly restrictive.

(2) Allowing commercial surrogacy - even if not-for-profit - will I believe add to / raise the cost of surrogacy. Any increase in cost on what is an already expensive process will inevitably restrict access.

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:

Short Form Questionnaire: Law Commissions' Surrogacy Consultation



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?
Click or tap here to enter text.

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

What is your email address?
[redacted]

What is your telephone number?
[redacted]

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	**Agree**
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	**Agree**
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	**Agree**
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	**Agree**
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	**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	**Disagree – in the case of Gestational Surrogacy the parental responsibility (eg child is cared for by IPs) should be with the Intended Parents from birth if an agreement is in place.**
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	**If an agreement is in place and all guidance followed prior to pregnancy, with GS, the child should remain with IPs and the IPs should have full parental responsibility.**
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	**Agree**
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	**Agree**
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	**Agree** **Independent arrangements (GS) still follow guidelines/have agreements in place and abide by the strict rules set by clinics before a surrogacy pregnany occurs.** **TS journey's would benefit from joining the new pathway to provide more protection for both Surrogates and IPs**
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	**Agree**
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	**Research on the internet can provide you with the same information as legal advice so only if this provides you with additional support or benefit.**
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	**First part yes.** **Second – that would depend, if surrogate started taking illegal drugs or drinking that would be unacceptable. Lifestyle should be discussed prior to an agreement being signed, additional demands on either side (unless acceptable to both sides) are unacceptable post agreement.**
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	**Agree**
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	**As far as I'm aware clinics in the UK won't allow surrogacy without it being a medical necessity.**
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	**This should be determined by the surrogate, as long as they pass physical and mental assessment it's their body and should be their choice.**
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	**Agree**
Q18	Consultation Question 35. We provisionally propose that regulated surrogacy organisations should be non-profit making bodies. Do consultees agree?
Your Response to Q18	**Agree**
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	**Agree**
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	**Agree**
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	**Agree**
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	**Agree**
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**
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	**Agree**
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	**Agree**
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	**he way it happens currently appears to be effective e.g. surrogate calculates approximate pregnancy expenses (childcare/mileage/loss of earnings/clothing/medication/food/recoup break etc.) This is split into monthly payments from positive test until birth and any unforeseen expenses are covered by IPs as and when required.**

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	**As above.**
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	**Additional costs not covered in standard expenses would be unexpected expenses caused by medical issues (time off work – upaid, unexpected childcare)**
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	**As stated previously all pregnancy expenses, essential and additional should be paid by IP's.**
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 loss of earnings has been occurred due to the pregnancy then yes it should be paid by IPs.**
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	**If the agreement is based on expenses occurred due to the pregnancy then yes but if these questions are based on a commercial arrangement where are a large fee is in place then no, all additional expenses should be covered as part of the commercial arrangement.**
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	**Currently all of these eventualities are included within the guidelines and covered as part of the expenses. It works well as it is and should be left to the 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	**Life assurance should be obtained by all surrogates and paid for by the IPs.**
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	**If an IP wants to buy the surrogate a gift that should be allowed without interference from the external bodies.**
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	**My view is that surrogacy should remain as expenses only so 2,3,4,5 & 6 from the above list are acceptable expenses.** **I don't think a fixed fee is appropriate. If that is the way forward I think it should only be a fixed fee and no additional expenses should be paid by IPs. The fixed fee should be set by a regulator.**

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	**Agree**
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	**Agree**
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	**Agree**
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	**Agree**
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	**Agree**

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	**That all hospitals are educated on surrogacy and have up to date policies in place. That the IPs are allowed in the birth suite (if surrogate agrees), make decisions regarding their child and allowed to leave the hospital with their child. That surrogates are treated with respect and their wishes listened to, for example being allowed to leave hospital if they wish and leave child with IPs.**

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**.

Response ID ANON-2V7F-Y8J3-K

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 16:23:45

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:
N.a.

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:

Yes. 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.

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:

No. 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.

Its absurd to wipe the actual biological parents from this human being's birth record. Everyone has the right to truth even if it hurts someones feelings.

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?

No

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:

18 Consultation Question 11:

No

Please provide your views below:

One week? Are you mad? Some mums will barely have recovered by then. And the baby needs more than a week with their birth mother for optimal health and attachment. Birth mums should always have the right to change their mind, and intensive therapy in advance to ask why they think this is a harmless act for them and their child.

19 Consultation Question 12:

No

Please provide your views below:

If a mum gives birth to a child, it's her child. No one else should have any right to take that child away. For context [redacted]. The childs rights to a relationship with its mother come first.

20 Consultation Question 13:

No

Please provide your views below:

This sort of statement is meaningless isn't it? "She seemed to have capacity to me" means sod all.

21 Consultation Question 14:

No

Please provide your views below:

Have you lot read anything about attachment disorder? Tearing a baby away from a birth parent intentionally will have effects later in life. You should absolutely be monitoring welfare.

22 Consultation Question 15:

No

Please provide your views below:

Not Answered

Please share your views below:

23 Consultation Question 16:

No

Please provide your views below:

A child dies and all you can think about is letting the prospective adopters have their name on the death certificate? No. It's not factual and it's not helpful.

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:

No

Please provide your views below:

Again birth certificates should be fact not feeling.

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:

I completely agree with this and couldn't put it better: 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:

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:

34 Consultation Question 27:

No

Please provide your views below:

It's not their 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:

There is no expiry date.

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?

No

Please provide your views below:

Your questions are purposefully obtuse. You know why and so do we.

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:

Can I speak as someone who chose not to pursue this? Two words - attachment disorder. Using a surrogate is akin to intentionally creating an orphan. No one should be purposefully removing an infant from the mother it has bonded with and needs.

39 Consultation Question 32:

Please provide your views below:

Please provide your views below:

40 Consultation Question 33:

No

Please provide your views below:

Oh my god no.

No

Please provide your views below:

No

Please provide your views below:

41 Consultation Question 34:

Please provide your views below:

Youre just going ahead with this anyway aren't you? Theres no way after this long and epically difficult a set of questions that you won't.

Please provide your views below:

A responsible person wouldn't be involved in this.

Please provide your views below:

Degrees studying attachment disorders.

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 shouldn't be organisations. There absolutely shouldn't be profit from selling babies in the UK, you'd hope that goes without saying.

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?

No

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 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 and the original birth certificate should be honest, not a fantasy document for the sake of the adoptive parents.

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, they might as well know who bought and sold them.

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:

Absolutely. If people can retrospectively change the biological sex on their certificate, it makes a mockery of even having them. Why bother? Are birth certificates needed? If so why can facts be altered and lied about?

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:

Of course why wouldn't they?

55 Consultation Question 47:

No

Please provide your views below:

Is this so people can log on and see prospective surrogates? You lot really are monetizing this aren't you?

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:

No

Please provide your views below:

Hah! So here they should have counselling first - but prospective birth mothers don't seem to need that in advance, from your other questions, and apparently the children don't need it for any other reason (like attachment disorders as they grow up).

No, just when the prospective adoptive parents don't want them finding out something. That's charming.

Please provide your views below:

Everyone has a right to know where they come from. Why do you think they need counselling? If they do, why do you think it's acceptable to create them and put them in that position?

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:

No, incest is fine for everyone in our brave new age I'm sure. (That's sarcasm, just to clarify.)

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 15: Payments to the Surrogate: Options for Reform

80 Consultation Question 72:

Not Answered

Please provide your views below:

Dear god please don't allow surrogacy to be monetized in the UK. What civilised society allows women to sell babies like this? You do know it's the poorest and most desperate who will resort to this don't you?

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 provude 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?

[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 - 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
- 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:

[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

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 f 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

Paragraph 18.22

Response ID ANON-2V7F-Y8JQ-H

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 16:27:16

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:

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?

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.

13 Consultation Question 6:

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.

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

Another period

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.

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:

Other

Please provide your views below:

There should be no denied period to change ones mind. 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.

19 Consultation Question 12:

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

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.

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:

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.

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:

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 childre

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. 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:

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.

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:

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:

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 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 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.

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.

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'

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:

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 or even present immediately.

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.

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.

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 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.

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:

functions, commodifies children, and risks the sale of children, against which there is an international prohibition. Surrogacy is therefore a violation of the human rights of both women and children.

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

I would like to see a total ban on surrogacy in the UK, as there is 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'. The idea that a 'surrogacy agreement' could place restrictions on the birth mother's lifestyle is utterly abhorrent.

Not Answered

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:

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:

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:

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:

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.

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 provude 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 fac

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:

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 had them harvested, farmed and paid for.

Response ID ANON-2V7F-Y8JE-5

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 16:37:40

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:

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:

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:

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:

Yes

Please provide your views below:

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:

Yes

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:

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:

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?

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?

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?

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?

Not Answered

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:

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:

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:

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:

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?

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:

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:

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:

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;, 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:

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:

89 Consultation Question 81:

Please provide your views below:

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:

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 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:

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

If other, please provide details:

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

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

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 f 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

Paragraph 18.22

Response ID ANON-2V7F-Y8JZ-T

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 16:48:40

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:

Turcan Connell

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?

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:

Yes

Please provide your views below:

We acknowledge that different members of the team had differing opinions on this question, however, the majority of our team agreed with this proposal. We recognise that it will bring greater certainty to the surrogacy process and ensure that it accurately reflects the intention of all of the parties involved in the surrogacy arrangement. The new pathway ensures that proper safeguards are in place, and balances the rights of the intended parents, the surrogate and the child.

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:

Yes

Please provide your views below:

We agree to this proposal, subject to the surrogates right to object being extended. The proposal as drafted provides that the period for objection should be the applicable period for birth registration less one week. In Scotland, this means that a surrogate would only have two weeks to object. We do not think that two weeks is a sufficient time frame to protect the surrogate mother's rights when having regard to the fact that the surrogate mother will most likely still be recovering from childbirth.

19 Consultation Question 12:

Yes

Please provide your views below:

We agree with this proposal. If the surrogate mother exercises her right to object, we agree that the intended parents should be able to make an application for a parental order to obtain legal parenthood. We also agree that the surrogate should be the legal parent of the child as this will safeguard and strengthen her right to object.

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:

We support proposals that prevent the surrogate's civil partner or spouse being the legal parent if the surrogate mother exercises her right to object. It could be open to them in due course to apply for legal parentage depending on the court outcome.

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:

Yes

Please provide your views below:

We agree with the proposal that the intended parents should acquire parental responsibility on the birth of the child. It will enable the intended parents to make decisions on behalf of their child from birth, which a parent would normally do as a matter of course, for example, decisions relating to the child's education and medical care.We support the proposal that if the surrogate exercises her right to object, the intended parents should continue to have parental responsibly where the child is living with them and they intend to apply for a parental order.

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:

We agree that a surrogate mother should retain PRRs until such time as she has not exercised her right to object to the surrogacy. A surrogate mother losing PRRs before this period would create issues for the surrogate mother in exercising her right to object and in any following court action.

36 Consultation Question 29:

Please provide your views below:

We consider that there are a number of complications in relation to the sharing of parental responsibilities and right where parties are in dispute, as there are in any child related case when the holders of PRRs disagree as to how they should be exercised. We are not convinced a restriction of the ability to exercise PRRs will necessarily solve these issues. If rights are to be held, there is a strong case for them to be held equally and where disputes cannot be resolved, then recourse to the courts, as the ultimately decision makers, whilst undesirably, may be the most appropriate forum to resolve these disputes having applied the welfare principle.

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:

We consider that there are a number of complications in relation to the sharing of parental responsibilities and right where parties are in dispute, as there are in any child related case when the holders of PRRs disagree as to how they should be exercised. We are not convinced a restriction of the ability to exercise PRRs will necessarily solve these issues. If rights are to be held, there is a strong case for them to be held equally and where disputes cannot be resolved, then recourse to the courts, as the ultimately decision makers, whilst undesirably, may be the most appropriate forum to resolve these disputes having applied the welfare 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:

39 Consultation Question 32:

Please provide your views below:

We agree it would be beneficial to bring independent surrogacy arrangements within the scope of the new pathway to improve regulation, through care and after care, where appropriate, for example legal advice and counselling. The essence of such arrangements are independent and parties may choose this route for that very reason, however, so the practicalities for the regulators bringing these arrangements within the pathway is likely to be challenging without the benefit of the process for the new pathway coming into effect automatically. We consider insight and feedback from parties who have gone down the independent surrogacy route would be most beneficial in gauging views as to the willingness of parties to such agreements to be brought within the new pathway

Please provide your views below:

40 Consultation Question 33:

Yes

Please provide your views below:

(1) We agree that there should be regulated surrogacy organisations.
.

No

Please provide your views below:

We do not agree that regulated surrogacy organisations should not be required to take a particular form. We think that this leaves too much discretion to the organisation and risks creating different standards across the country.

Yes

Please provide your views below:

(3) We agree that each surrogacy organisation should be required to appoint someone to ensure the organisation complies with regulation. However, we believe that a board should be appointed to support this individual to ensure accountability.

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?

Yes

Please provide your views below:

We agree that only regulated surrogacy organisations should be able to offer matching and facilitation services in respect of surrogacy arrangements in both the new pathway and outside of the 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?

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?

Not Answered

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?

Not Answered

Please provide your views below:

55 Consultation Question 47:

Other

Please provide your views below:

We are not opposed to such a proposal. However, we do believe that issues of access to such a register are important points to consider before such a proposal is implemented. Clearly, issues of information control and human rights are engaged.

Other

Please provide your views below:

We recognise that these proposals are dependent on adoption of the new pathway.

(1) We agree that the holder of this information should be the Authority.
(2) We recognise that there is an issue that a register of information may prevent or discourage potential donors.
(3) We do see issues with collection of the information. If a register is to be relied upon then the holder of the register must be given the powers to enforce collection of information.

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:

We agree that current provisions relating to counselling are sensible and should be replicated should such a register come to exist.

57 Consultation Question 49:

Other

Please provide your views below:

Access to the register below the age of 16 presents issues. In line with Scots law, the judgment of a professional on the maturity of the child may be attractive

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:

We believe that a provision should be made to allow a person carried by a surrogate to access the register to identify the surrogate's own child only if they are genetically related.

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:

Yes

Please provide your views below:

Yes

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:

Yes

Please provide your views below:

We agree with this proposal. We recognise that this type of agreement has various implications including health, legal, financial and emotional implications. Counselling allow parties to recognise these implications, discuss them with a qualified and experienced counsellor and decide the best course of action.
We believe that counselling should be regulated and counsellors should follow a regime to ensure a uniform practice across the country. We agree that counselling should be provided by a counsellor who meets the requirements in the Code of Practice at paragraph 2.14. However, we recognise issues with appointing a generic counsellor who is not a fertility specialist, as per paragraph 2.15 of the Code of Practice.

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:

We agree with this proposal. Both parties must be properly advised on the legal implications of the agreement and their rights and obligations under the agreement.

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 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:

We agree with this proposal. We recognise the issues arising where a child is unable to obtain a passport prior to birth. In particular, where a child is to acquire British citizenship through registration, that child is in effect in limbo until the Certificate of Registration is issued. There needs to be further clarity on this scenario and clear guidance issued. We also recognise an issue with allowing a passport to be obtained prior to the birth of the child if the surrogate has an opportunity to object once the child is born.

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:

We agree with this proposal. However the question is raised as to whether the UK Government also has a duty to provide information and guidance to the international surrogate.

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:

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?

- 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.

s://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.

›nsultees 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

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.

I find it alarming that this consultation assumes that the issue of 'procreative liberty' takes precendence over a woman's life. I can't think of another instance where a citizen would be 'encouraged' to undertake an activity which would have potentially fatal consequences. As I go through these questions, it seems more and more as if the women and children involved are seen as commodities, to the point where you merely ask if the surrogate may be insured as one would a house or a car. I find it baffling that you can categorise the desire for a child with a 'medical need', which could be balanced by buying the reproductive capacity of a woman who means nothing to you, I can't see how this could be endorsed by a civilised country.

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 f 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.

s://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

Paragraph 18.22

Response ID ANON-2V7F-Y8J5-N

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 16:58:38

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:

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:

N/A

Chapter 6: The parental order procedure

8 Consultation Question 1:

Yes

Please provide your views below:

I am concerned that women in countries where they have fewer opportunities than women in the UK would be pressured into having children. There are many risks to mothers in pregnancy and women in desperate situations need to be protected from abuse. Trafficking children and exploiting birth mothers is wrong, these are human rights issues of utmost seriousness. Babies and wombs are not for sale.

Please provide your views below:

9 Consultation Question 2:

Please provide your views below:

All surrogacy cases should be held by senior judges - sale and trafficking of children is wrong and children should be protected. Birth mothers also need protection.

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:

Nothing about the transfer of parental responsibility should be automatic and all options should be open. 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.

The child's best interests are the most important factor.

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 contradicts the UN Special Rapporteurs 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 domestic context.

This proposal would set a very dangerous precedent for all women, all mothers, all children and all 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 measure 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 they would have little or no legal responsibility for the child. The rights of the child must be prioritised. The child's best interests are the most important interests.

15 Consultation Question 8:

Other

Please provide your views below:

I 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 completely 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 proposals for the new pathway.

18 Consultation Question 11:

No

Please provide your views below:

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 most important.

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 six 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 caesarian to these changes is added all the stresses 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. The inevitable disruption to your life caused by pregnancy prepares you for caring for your child.

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.

The intended parents have no biological connection to the child - the child is the most important person in all of this.

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:

How can this possibly make any sense? The intended parents are not the child's parents. This is just nonsense. For whose benefit is this? Definitely not the child's.

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 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.

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.

Not Answered

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. This already happens in the US with college students selling their eggs. This is completely wrong.

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 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.'

How can it ever be a medical necessity? Having a child is not a requirement for life!

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?

I have a daughter who was 18 she is still vulnerable to adults asking her to do things and feeling she can't decline as it would be rude. Someone of her age could be manipulated very easily.

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:

Other

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.

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:

Not Answered

Please provide your views below:

Yes

Please provide your views below:

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.

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 that 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 humans 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 humans 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 provude your views below:

I am opposed to any reform in this area because it would act to normalise surrogacy which is a humans 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 humans 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:

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.

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)

- Medical practitioner
- I am a General Practitioner

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

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 f 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

Paragraph 18.22

Response ID ANON-2V7F-Y8J9-S

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 17:00:47

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:

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 of birth mothers, as well as numerous high-profile cases where children have been treated appallingly / refused, and a high level of scrutiny should be maintained.

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:

The intended parents should not be documented as the legal parents at birth. This would reduce the birth mother to a vessel, 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 the right of the child to discover their genetic identity is limited, which has a profound psychological impact. There is also a risk that closely related persons may become romantically and sexually involved due to lack of awareness about their relatedness.

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, and she should not be pressured. There should be no automatic right to a baby for anyone other than its birth mother, to whom it is bonded immediately after conception. This consultation takes no account of the natural, hormonal and genetic 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:

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:

The surrogacy business should be banned, not made easier. There is no evidence in the proposed changes that there is any benefit to the surrogacy business, which benefits agencies, lawyers and those commissioning a surrogate (who is expected to carry a child as an altruistic act), being made easier for those who profit. It is not ethical to turn a profit on the exploitation of women and their children. 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 (where birth mothers have been exploited due to their financial desperation, leaving them devastated).

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:

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:

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 that what it actually is - commercial surrogacy which is not legal.

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:

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 that 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?

Not Answered

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?

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:

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 recognize as key elements for children's rights, security and healthy maturity. Otherwise human life is reduced to a commodity for those with means to purchase.

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:

Short Form Questionnaire: Law Commissions' Surrogacy Consultation



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? No

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 Parent

What is your email address?
[redacted]

What is your telephone number?
[redacted]

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. There should be agreements in place in advance of the birth. Once the baby is born, provided the genetic links are to the intended parents the surrogate should not have rights to retain the child/ children.**
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	**No. The surrogate should not be able to object, unless she has a genetic link. Then the above should apply.**
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	**The surrogate should not have rights to retain the child, unless she has a genetic link. If the above is legalised, then yes any parent with a genetic link should automatically have rights to the child.**
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**
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	**No.**
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	**There may be opportunity to develop this area. The proposition is grey and needs further refining. Inherently yes, there should be restrictions to the surrogate if no genetic link**
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	**Yes. Whether independent or through an organisation, the law should apply to all surrogacy arrangements within the UK**
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. But counselling should focus on balance of relationships between both parties and agreement to ethical questions regarding health, abortions etc.**
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	**It should be a recommendation, not a requirement. There is limited specialists regarding surrogacy and as a result those solicitors charge a premium which is obscenely high and unnecessary.**
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 to both**
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	**The need for surrogacy should be confirmed by their GP/ specialist be it for mental wellbeing or inability to conceive or risk of life during pregnancy. As is required for international surrogacy for many countries.**
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, except exceptional circumstances where additional counselling is requried**
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	**No.**
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. Matching should be regulated to ensure there are correct requirements in place. This should minimise risk of matching for speed rather than the correct partnership which is key in altruistic surrogacy.**
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	**There should be a genetic link in both international and local surrogacy. Internationally it is required to minimise risk of child abduction etc. This should be no different in the uk. I do not agree and there should be a link to either parent.**
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.**
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	**It depends on the information suggested**
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	**I agree to all of the above.**
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. But this should be regulated to only being able to access the information for health purposes and to minimise the risk of incest.** **No to those with no genetic link.**
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 link**
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. this should not be accessible**
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	**All of the above. And should be agreed in advance with both parties as to preferred route.**
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 this should be possible. Some costs sre not necessarily receiptable. There should be flexibility in the law for this.**
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 although this is a big unknow and isn't ideal for the intended parent, the surrogate is doing an amazing thing and should not be left out of pocket. However any unique costs should be adequately justifiable and there be evidence.**
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	**There should be a cap in place but 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	**Yes but again should be quantifiable and a cap potentially agreed.**

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	**I have not been in this position so cannot comment**
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	**Left to the parties to negotiate but perhaps guidelines provided on a recommended fixed fee.**
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	**No. they should not pay compensation. The surrogate is agreeing to this willingly and this is a risk.**
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 gifts should be acceptable and there should not be restrictions. It should be up to the intended parents discretion**
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	**A fixed fee may be a good option, but again perhaps consider a recommendation.** **If it is a fixed fee only gifts should be an addition.**
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	**No comment**
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 I agree to all the above**

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. What exists is awful and unclear**
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	**There is currently zero support from the British health service for those undergoing surrogacy, especially abroad. There should be support for anyone who is due to be a parent.**

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**.

Response ID ANON-2V7F-Y8JP-G

Submitted to The Law Commissions' Consultation on Surrogacy
Submitted on 2019-10-11 17:11:47

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:

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:

Parenthood should be automatic at birth for the intended parents.

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:

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?

No

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:

Not Answered

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:

This could work but all the surrogates I have spoken to do not want any legal parenthood

29 Consultation Question 22:

Please provide your views below:

No further oversight required

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:

Please provide your views below:

40 Consultation Question 33:

No

Please provide your views below:

Yes

Please provide your views below:

No

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?

No

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?

No

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?

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:

No

Please provide your views below:

No

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:

No

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:

No

Please provide your views below:

Please provide your views below:

No

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:

No

Please provide your views below:

Please provide your views below:

75 Consultation Question 67:

No

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:

77 Consultation Question 69:

No

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 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:

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:

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:

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?

No

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 provude 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?

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:

[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

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 f 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

Paragraph 18.22